

***United States Court of Appeals
for the Second Circuit***



APPENDIX

Signed
74-1119

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AVIS RENT A CAR SYSTEM, INC.,

Plaintiff-Appellee

v.

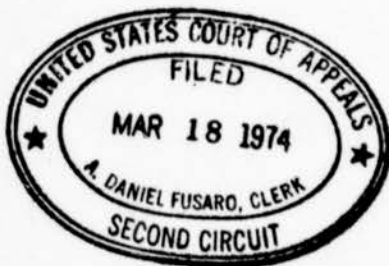
UNITED STATES OF AMERICA,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE EASTERN
DISTRICT OF NEW YORK

APPENDIX

Volume V (pp. 748-910).



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PAGINATION AS IN ORIGINAL COPY

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----X

4 AVIS RENT-A-CAR SYSTEM, INC.,

5 Plaintiff,

6 - against -

70 C 70

7 UNITED STATES OF AMERICA,

8 Defendant.

9 -----X

10 United States Courthouse
11 Brooklyn, New York

12 July 27, 1973
10:00 a.m.

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16 B e f o r e :

17 HON. ANTHONY TRAVIA, U. S. D. J.
18
19
20
21
22
23

24 Ilene Ginsberg
25 Acting Official Court Reporter

1
2 APPEARANCES :
3
4

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6 Attorneys for plaintiff
7 405 Park Avenue
8 New York, N.Y.

9 By: ROBERT LAYTON, ESQ.

10 ROBERT A. MORSE, U.S. ATTORNEY

11 By: ROBERT HIPPLE
12 Department of Justice
13 Tax Division
14 Washington, D.C. 20530
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THE CLERK: Civil cause for trial, Avis Rent-A-Car System, Inc., versus the United States of America.

THE COURT: Do I understand there is a stipulation either in writing or to be placed on the record to the effect that a jury trial in this case is waived?

MR. LAYTON: On behalf of Avis Rent-A-Car System Inc., plaintiff, we do hereby waive our right to trial by jury which we did demand in this action.

THE COURT: Was that with the knowledge and consent of the plaintiff? I assume it was.

MR. LAYTON: Yes.

MR. RIDDLE: The defendant agrees with the waiver.

THE COURT: All right. Jury trial waived. May we proceed?

MR. LAYTON: Yes, your Honor.

Your Honor, we do have, probably, a reasonably abbreviated trial.

We have taken extensive depositions. The government has filed most of the depositions. There are three or four to be filed.

1
2 THE COURT: I don't have them here.

3 THE CLERK: I will get them.

4 THE COURT: I assume you know what has been
5 filed?

6 MR. LAYTON: We don't need them this
7 morning.

8 THE COURT: No, but I will need them today.

9 THE CLERK: When we take a break I will
10 bring them up.

11 MR. HIPPLE: I would like to file four
12 additional depositions taken by the parties in
13 Pittsburgh, February 20, 1973: Michael Copelin,
14 C-o-p-e-l-i-n; Nick Z-a-t-e-z-a-l-o; Robert
15 R-e-e-s-e; Jerome A. B-e-c-k Jr.

16 THE COURT: Now, these depositions are
17 being offered and consented to, I understand,
18 because these witnesses are more than 100 miles
19 away from this Court.

20 MR. LAYTON: Right, your Honor.

21 THE COURT: So, on that basis we can
22 accept them.

23 MR. LAYTON: Right.

24 THE COURT: That includes those previously
25 filed.

1
2 MR. HIPPLE: Yes, all of them.

3 In effect, we have already tried the case
4 by traveling to the witnesses.

5 There were a number of exhibits to all the
6 depositions. I would like to file them now.

7 MR. LAYTON: Yes, I would like to put in
8 five exhibits to the depositions, not physically
9 attached to the depositions.

10 The first four are exhibits to the deposition
11 of Robert G-o-s-l-i-n-g taken February 28, 1973 and
12 I am offering plaintiff's exhibit 1 to that
13 deposition which is a business license from the
14 city of Seattle.

15 THE COURT: Any objection?

16 MR. HIPPLE: No, your Honor.

17 THE COURT: Received.

18 MR. HIPPLE: These were all marked at the
19 time the deposition was taken.

20 THE COURT: They should be remarked now,
21 because we are in the course of the trial and
22 anything marked as an exhibit then is being
23 offered as an exhibit now so we will take it as
24 plaintiff's exhibit 1.

25 THE CLERK: One license marked plaintiff's

1
2 exhibit number 1 in evidence.

3 (So marked)

4 THE COURT: No objection. It is received.

5 MR. LAYTON: I also offer as plaintiff's
6 exhibit 2, three sheets which are -- two of which
7 are ledger sheets from the books of King Transport,
8 run by Mr. Gosling on the top of which is an
9 explanatory legend; these sheets having been
10 previously marked as plaintiff's exhibit two for
11 identification on the occasion of the deposition
12 of Mr. Gosling.

13 MR. HIPPLE: No objection.

14 THE COURT: Received as plaintiff's exhibit
15 2.

16 THE CLERK: Three page document marked
17 plaintiff's exhibit number 2 in evidence.

18 (So marked)

19 MR. LAYTON: I also offer as plaintiff's
20 exhibit three in evidence a copy of an Avis Rent-
21 A-Car vehicle transfer contract which has previously
22 been marked plaintiff's exhibit three for
23 identification on the occasion of Mr. Gosling's
24 deposition.

25 MR. HIPPLE: No objection.

1
2 THE COURT: Received as plaintiff's
3 exhibit 3.

4 THE CLERK: One document marked plaintiff's
5 exhibit number 3 in evidence.

6 (So marked)

7 MR. LAYTON : I also offer as plaintiff's
8 exhibit four in evidence the invoice receipt book
9 of King Transport Company which had previously
10 been marked plaintiff's exhibit four for
11 identification on the occasion of Mr. Gosling's
12 deposition.

13 THE COURT: Any objection?

14 MR. HIPPLE: No objection.

15 THE COURT: Received.

16 THE CLERK: One invoice book marked
17 plaintiff's exhibit 4 in evidence.

18 (So marked)

19 MR. HIPPLE: Defendant's exhibit A, the
20 only one.

21 THE CLERK: One document marked defendant's,
22 government's, exhibit A in evidence.

23 (So marked)

24 MR. HIPPLE: It is a vehicle transfer
25 contract, identical with exhibit three of the

1
2 plaintiff. We are putting it in now because
3 every one of the witnesses identified that and
4 discussed it.

5 THE COURT: Any objection to that, Mr.
6 Layton?

7 MR. LAYTON: No objection. It is just
8 another form --

9 THE COURT: Yes, it is identical to your
10 exhibit three.

11 MR. LAYTON: It is just another form of
12 that exhibit.

13 Your Honor, I have, on behalf of the
14 plaintiff, one live witness this morning.

15 THE COURT: That's interesting.

16 MR. LAYTON: I wonder if your Honor would
17 like some opening remarks?

18 THE COURT: Yes.

19 MR. LAYTON: This is a tax refund action
20 brought by Avis Rent-A-Car System, Inc., which
21 seeks the return of partial payments made on the
22 account of the amount assessed by the I.R.S.
23 service under Federal Insurance Contribution Act,
24 Federal Unemployment Tax Act and Federal Withholding
25 Tax Act for 1962, 63, 64, 65 and 1966.

1
2 In March of 1968 Avis paid \$31,178.42 on
3 account of the deficiency assessment made by
4 I.R.S. with respect to these taxes in issue.

5 That constituted a divisible portion, ten
6 percent of the total assessment.

7 The government in this action has counter-
8 claimed for the remaining 90 percent and at issue
9 here, with respect to the validity of the
10 assessment, is one sole, narrow question, which is
11 the status of a category of people known as car
12 shuttlers, as either independent contractors or
13 employees.

14 The government contends --

15 THE COURT: That of course, is I gather
16 from the reading of the papers, is the only
17 issue in this case.

18 If they are employees you are stuck. If
19 not, they refund your money and loose their 90
20 percent as to the action anyway.

21 MR. LAYTON: Right. That is the issue here.

22 Now, from the prior history of the action,
23 your Honor may see that we did take fairly
24 extensive discovery because of the fact that the
25 years in issue were going back from 1962 to 1966.

1
2 There was a fair amount of difficulty
3 locating the representatives performing these types
4 of service but we were fairly successful and we
5 took depositions around the country.

6 I can state to your Honor that is the
7 position of the plaintiff, under the cases and the
8 cases have become rather clear over the last
9 number of years that there are a lengthy number of
10 factors which the courts have said are the indicia
11 and which determine a common law rule as to
12 whether there is a relationship; master/servant;
13 employer/employee and it is our view that the
14 majority of these factors almost all militate in
15 favor of the plaintiff.

16 The particular type of function performed
17 by the car shuttlers is, as every other case, I
18 suppose a little different --

19 THE COURT: Before we go into that, I read
20 your pre-trial or trial memorandum and you indicate,
21 I believe, at one point, if my memory serves me
22 right, that the service has specifically stated
23 in one of its rulings that they are -- shuttlers --
24 are employees so there is a specific rule that they
25 made.

1
2 Is that a rule or a decision to a rule
3 because that to me is very interesting.

4 MR. LAYTON: It is a revenue ruling. I
5 cited the number and I will hand it up.

6 THE COURT: Please do.

7 Let's offer that for whatever it is worth.

8 Put it in as plaintiff's next number.

9 THE CLERK: Three page document marked
10 plaintiff's exhibit number 5 in evidence.

11 (So marked)

12 THE COURT: If my training serves me right
13 I didn't notice in your citations any particular
14 citations that directly dealt with the employer/
15 employee relationship such as --- and I am not
16 saying they are of value in this case but they
17 could be used as some idea as to how the courts
18 have been thinking along those lines and I refer
19 particularly to the long line of workman's compen-
20 sation cases where the issue of employer/employee
21 relationship is of such great importance. In other
22 words, that is really one of the main factors in
23 all those cases.

24 Do you see any relationship between anything
25 along those lines in those cases vis-a-vis

1
2 employer/employee relationships as might be
3 described in this case?

4 MR. LAYTON: It is similar your Honor but
5 it is our view that the federal courts in the
6 last ten years have made it very clear that they
7 have adopted for these purposes, in numerous
8 and very similar cases, tax refund cases --
9 indeed, one in this district -- of saying "You
10 go through the form to the substance and you look
11 to these approximate 16 or 17 factors and you
12 look at those rather than the legal tag of just
13 saying control."

14 The cases are saying, the revenue regulations,
15 "Does the employer have control" and you determine
16 that by looking at this large number of factors
17 and how they balance out. That is how the
18 determination is made. Where a jury determination
19 is made the courts indicate those are the factors
20 to consider.

21 We are here saying to your Honor we would
22 like your Honor to consider those factors in
23 determining the mixed question of law and fact.

24 THE COURT: Yes.

25 I just bring that out at this time because

1
2 I wanted to get some idea as to how you felt
3 about them.

4 I follow in your trial brief very carefully,
5 the thoughts you expressed and the conclusions
6 you arrived at and I was just wondering about the
7 cases.

8 MR. LAYTON: I think over the last number
9 of years as I said, the revenue service in the
10 federal courts has pretty much taken a similar
11 tact. They say "We look to these same questions"
12 but there is dispute as to how the answers come
13 out.

14 THE COURT: I guess the situation in one
15 case that I might have used in this case are
16 entirely different.

17 MR. LAYTON: So the facts are extremely
18 important and we have tried to indicate that
19 by the peculiar nature of the kind of business of
20 the plaintiff and the somewhat limited functions
21 served by car shuttlers and the way it is operated
22 during the years in issue.

23 A great number of these factors point to
24 the fact that Avis had no control over these
25 people. Indeed, in a number of instances, which

1
2 your Honor will see in the depositions, the
3 person who Avis contacted with respect to dealing
4 with shuttlers ran his own kind of independent
5 business and he supplied shuttlers to not only
6 Avis -- for example, Mr. Gosling, he supplied
7 shuttlers to Hertz, to Budget, National --

8 THE COURT: You are allowing Hertz's name
9 to get in on this?

10 MR. LAYTON: Only for this limited purpose.

11 THE COURT: I thought they only admitted
12 they were number one.

13 MR. LAYTON: Anyway, it is indicated that
14 type of individual was independent because he,
15 through the Seattle business of Mr. Gosling,
16 rendered his independent services to other
17 companies and that is not a characteristic of
18 someone who is an employee and in addition, you
19 will see there was a mormon church in Ontario,
20 California, that went into the business of
21 supplying shuttlers to the local Avis stations and
22 supplied members of the church to do the
23 shuttling; housewives, members of the church and
24 all the monies, fees went to the church. That
25 was there method of doing good.

1
2 My point in this is that there is a
3 deperateness, diversity, in the manner in which
4 this function was performed and an awful lot of
5 that shows that Avis didn't have the type of
6 relationship that one would consider an employer/
7 employee relationship with these people.

8 With respect to the particular control
9 matters we are talking about, as I pointed out,
10 an important factor here is whether Avis directed
11 in detail the manner in which this limited function
12 was carried out.

13 I think it is important that Avis's business
14 was basically renting cars to the public. That
15 is what they do and an incidental feature of that
16 service, which not all companies offer, but some
17 of the big ones do, is that the customer does not
18 have to bring the car back to the same place from
19 which he rented it.

20 As a result of that service and feature,
21 and do to difference of timing of business;
22 weather, fluctuation, other factors, large numbers
23 of cars ended out at airports.

24 For example, a car rented in Seattle ends
25 up in Portland and there arises a need to have

1
2 the cars moved and this is an irregular type of
3 thing. There is no real consistency to it.

4 THE COURT: That is a point I would like
5 to have you clarify a little more.

6 If that is one of the factors of your
7 business, to permit one who rents a car to leave
8 it someplace else, why do you say that -- and you
9 admit that this occurs all over and the
10 necessity arises that these cars have to be
11 transported back to where the need is greater,
12 which is basically what you are telling me --
13 why isn't that then an integral part of your
14 business rather than assigning it to a less
15 important role in your company when that becomes
16 an important role in view of the fact that you
17 allow people to leave the car where they want
18 rather than bring it back.

19 You wouldn't need a shuttler if you told
20 them to bring the car back to where it was rented
21 from.

22 MR. LAYTON: Right.

23 THE COURT: I am just trying to figure out
24 why it is not an important part of your business.

25 MR. LAYTON: I understand exactly what

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2 your Honor is saying, but the point is, that the
3 cases have indicated that where the very
4 business being performed by the taxpayer -- in
5 other words, say a taxpayer is a house painter;
6 paints houses and he has X, Y or Z doing the
7 house painting, again the issue arises whether
8 that man who paints the houses is an independent
9 contractor or employee and the courts have found
10 that since he is performing the exact function
11 the taxpayer is in business for, that is a factor
12 that shows some kind of greater employment
13 relationship.

14 My point is that Avis is in the business of
15 renting cars. They are not using the shuttlers
16 as car rental agents or serviceagents. They are
17 not using them as executives in their business.
18 The particular thing they are doing is an incidental
19 part. It is a part but a smallish part of one
20 service feature that they offer. Their basic
21 business is renting cars to the public and that is
22 the point. If they decide to take away that
23 feature they wouldn't be out of the business --

24 THE COURT: No. That is the point that I
25 am raising and I am prepared to concede with you

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2 that it might be a small part of the business but
3 under those circumstances you just pay them and
4 not tell them they are subject to taxes themselves,
5 like income.

6 If they are treated as independent contrac-
7 tors there should be some tax thereon and if
8 nothing is said to them -- like, our withholding
9 taxes -- I am just wondering how the government
10 gets the authority and it has been decided and
11 they do tell a company "You are going to be
12 responsible for the withholding taxes of your
13 employees" and not have the employees worry about
14 it alone because then the government would have
15 some job trying to get it.

16 Now, I am trying to see what happens here
17 where you pay an independent contractor, assuming
18 that he is, you pay him X dollars for shuttling
19 a car.

20 What record is there that he got paid a
21 certain amount and who keeps those records and are
22 you obliged under that, to at least inform the
23 government about the payment to these people as to
24 a certain amount like the banks send out notices,
25 I think a 1099 form --

1
2 MR. LAYTON: The law has not required
3 that yet.

4 THE COURT: I know that but it has to be
5 considered in this case as to whether or not these
6 people are independent contractors, truly as
7 such, and then it is their obligation to make
8 the return.

9 In other words, your company does nothing
10 with regard to withholding or taxes or anything
11 or even making a report to the government.

12 In other words, you just pay them X dollars
13 for delivering this car.

14 MR. LAYTON: A flat fee; Three dollars from
15 Kennedy Airport to Manhattan and that's it.

16 But, we do urge upon your Honor --

17 THE COURT: It has nothing to do with this
18 case, but does that situation you are describing,
19 since we are dealing with 1962 through 1966 and
20 anything after that isn't part of this issue,
21 but does that situation still pertain?

22 MR. LAYTON: Oh, yes.

23 THE COURT: Your business is still run on
24 the same basis with shuttlers?

25 MR. LAYTON: Yes and I don't think that

1
2 it is unusual --

3 THE COURT: No --

4 MR. LAYTON: Because you will see that in
5 most of the cases here, the issue is after the
6 fact.

7 Now, we had many discussions with Judge
8 Rosling --

9 THE COURT: Was this one of Judge Rosling's
10 cases assigned to me?

11 MR. LAYTON: Yes it is.

12 As he put it, if we are right we didn't
13 have to keep any records. We didn't keep any
14 records and our view is that the issue is a
15 narrow one.

16 We made an earlier determination in our
17 minds that these people were independent and we
18 acted consistent with that view and treated them
19 that way and our evidence shows --

20 THE COURT: That was your determination.

21 MR. LAYTON: Yes. That is what our vehicle
22 transfer contract says.

23 THE COURT: That was the purpose of my
24 asking those questions. I just wanted to clarify
25 in my mind that there has been no obligation --

1
2 MR. LAYTON: No obligation under the law.

3 Now, a determination will be made because
4 the government says "You should have."

5 Now, we say because of the factors here and
6 the manner in which these people operate we are
7 right and I would point out that there are two
8 main categories of employees of Avis who are
9 located in the stations and the stations are the
10 entities dealing with the public.

11 When you come into an airport or any town
12 there is a rental agent behind the counter wearing
13 a red jacket, usually a man or a woman.

14 That person deals with the public and
15 behind the counter, inside the office, there is an
16 employee called a service agent. That is usually
17 a male who cleans the cars, washes them changes the
18 tires, and gets the cars ready and sometimes
19 repairs them and our testimony will show that just
20 by your Honor examining -- seeing the differences
21 between the types of functions performed by those
22 people and the manner in which the company deals
23 with them, it sharply differs between those types
24 of individuals and what is called the car shuttlers.
25 The difference becomes very clear.

1
2 The car shuttler appears in no regular
3 fashion at all. There is no way of getting him or
4 her to show up at any particular time. They are
5 irregular as drivers. They are drifters and
6 some are people who moonlight with other jobs;
7 housewives, working for the Mormon church, for
8 example; service personnel; people who are
9 retired from one or another form of work in life
10 and want some extra money. They kind of drift in
11 for a couple of days and may drift away. It is
12 an irregular transitory kind of thing. There is
13 no fixed time when they show up and the reason we
14 think it is important for your Honor to know that
15 the need for shuttling is irregular and doesn't
16 have a fixed time is that because, as a result,
17 there is no way anyone can have regularity of
18 employment because the need is not that consistent.

19 If someone were foolish enough to try and
20 turn up every Monday or Tuesday at nine o'clock
21 he would waste his time. He could sit around the
22 station all day and it would turn out they didn't
23 have to move one car and he would make nothing --
24 zero.

25 The other important thing is that they don't

1
2 tell him how to perform the function he performs.
3 They give him a car, keys, and you will hear from
4 the testimony they tell him to move the car from
5 point A to point B and that's it.

6 He decides how to do it, what road he
7 takes, the route he travels, how fast he is going
8 to do it. The only requirement is that he deliver
9 the same car in the same condition to that point.
10 There is a fixed fee he is given.

11 Now, if an ambitious fellow is in business
12 to make money and he is a good driver, knowledgeable
13 and careful, he can perhaps do two trips in the
14 same period of time where a person might make one.
15 So, we do think there is some skill involved on
16 their part and they perform the functions
17 themselves with no interference, direction or
18 control by Avis.

19 Now, contrasted to that, your Honor will
20 hear, that with respect to the employees, rental
21 and service agents, Avis controls them in very
22 many ways.

23 Avis requires them to wear certain uniforms;
24 that women employees dress in a certain manner;
25 that they wear a uniform furnished by the company.

1
2 adhere to certain rules and they work on certain
3 hourly shifts. So, there is a tremendous
4 contrast, we think, between these types of people.

5 One of the other factors extraordinarily
6 important here too, is that there is no control
7 in the sense that Avis cannot -- well, I would use
8 the word "fire" someone because there is no
9 guarantee the person will come the next time. He
10 shuttles two cars today and he may decide he doesn't
11 want to come back the next day. It may be cloudy
12 or raining or he may just feel tired, so if he
13 shows up we offer another contract. He signs it
14 and moves the car so there is none of the hiring/
15 firing type of relationship one has in the ordinary
16 employment relationship.

17 Another factor is in the pure manner of
18 selection of the person. When someone applies for
19 a job at Avis there is an elaborate employment
20 application procedure. He fills out a form
21 regarding his references, education, prior
22 employment. All of that is checked. He is
23 interviewed and, indeed, takes an employment test.

24 With respect to a shuttler, they just check
25 for a valid drivers license in existence and

1
2 indeed, in many situations, your Honor will hear
3 about how Avis never even sees the shuttler.
4 They don't even see him.

5 Who they deal with is that they contact
6 a person such as Mr. Gosling or the Bishop of
7 the Mormon church in Ontario, California, Mr.
8 Bradford, and they say "We have 30 cars to move
9 tomorrow from Anaheim to Ontario. Can you move
10 them?"

11 "Yes."

12 He then selects or arranges through the
13 church, the people to move the cars. They come
14 down, move the cars, drive them and Avis issues
15 a check to the Bishop and he distributes that
16 money and Avis doesn't actually know how he
17 distributes it. They assume he distributes it
18 on the basis of the trip alone or he may not
19 distribute it or we believe, as with the Mormon
20 church, the money goes to the church. With
21 someone else it may be distributed in a different
22 way as suits the people involved.

23 THE COURT: Is there any occasion where you
24 don't deal with someone where you call up and say
25 "Send me a shuttler" but rather, are there times

1
2 when you have the fellow looking for a job where
3 you deal with them directly?

4 MR. LAYTON: Many of them.

5 THE COURT: In that case you just ask for
6 his license?

7 MR. LAYTON: That's all.

8 THE COURT: You might be giving it to
9 someone to use who wants to do what he wants to do --
10 for example, a bank robber.

11 MR. LAYTON: I think you will hear from
12 Mr. Hale, our witness, as to how to cover that.

13 THE COURT: You could use a lot of cars,
14 especially if it becomes known you just ask for
15 a driver's license and it doesn't have to be
16 their license. I could show you a dozen licenses
17 in different names in one wallet.

18 If you have no regard at all as to who is
19 used as a shuttler, then I am wondering --

20 MR. LAYTON: Well, that doesn't effect the
21 issue here. It may be a factor in our business -

22 THE COURT: Well maybe, maybe--

23 MR. LAYTON: But I think you will hear from
24 the witness, peculiar circumstances --

25 THE COURT: Except that you might be aiding

indeed, in many situations, your Honor will hear about how Avis never even sees the shuttler. They don't even see him.

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"Yes."

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21 issue, here. It may be a factor in our business -

22 THE COURT: Well maybe, maybe--

23 MR. LAYTON: But I think you will hear from
24 the witness, peculiar circumstances --

25 THE COURT: Except that you might be aiding

1
2 and abetting that person from not paying income
3 taxes.

4 I am just thinking out loud and I am
5 thinking fast.

6 MR. LAYTON: I don't think so.

7 THE COURT: I am just asking questions.

8 MR. LAYTON: I think you will hear the
9 peculiar circumstances that Avis has more trouble
10 with the people renting the car as far as driving
11 off than the shuttlers.

12 THE COURT: Oh, I don't doubt that.

13 MR. LAYTON: We call the authorities and
14 try to get them back.

15 THE COURT: I have seen them here on cases
16 where the renting of the car was incidental to the
17 crime committed.

18 MR. LAYTON: We also consider it important
19 that the shuttlers had complete freedom and
20 ability and indeed, did shuttle for other companies;
21 indeed, for companies who are competitors of ours
22 and as your Honor can imagine, if someone were
23 an employee of yours, I don't think you would, too
24 lightly, let him go to work for your competitor.
25 In other words, if someone was really our employee

1
2 we wouldn't permit that person to go and do
3 something good for Hertz.

4 But, you will see a number of these people,
5 particularly airline personnel -- the depositions
6 indicate an interesting development with airline
7 personnel because a number of Avis stations are
8 in airports and to give you an illustration,
9 depositions we took in Louisville, the testimony
10 was that a fellow behind the counter at Piedmont
11 Airlines knows the rental company has cars to be
12 moved so he would go down the hall and ask the
13 companies "Do you have cars to be moved?" He
14 would go to Hertz and then Avis and Avis would
15 say "Yes" and he would say "I would like to make
16 extra money."

17 Now, he has a singular advantage because
18 he can get free transportation on the airline to
19 where the car is and a free pass so it doesn't
20 cost him anything to get there. Then he picks
21 up the car and drives back. That person is a full
22 time employee of Piedmont and he is just trying
23 to make extra money.

24 The next day he performs the same service
25 for Hertz or National. Now, if you can visualize

1
2 that person he has none of the indicia of an
3 employee of Avis but rather of Piedmont. If
4 Avis had an employment relationship with him it
5 is almost hard to conceive how they would permit
6 that.

7 There was also testimony that your Honor
8 will hear as to armed forces personnel, which is
9 another type of category of shuttlers, that makes
10 sense because Air Force or armed forces personnel
11 get off shifts or duty and their base is near an
12 Avis station.

13 You will hear some testimony that what
14 Avis used to do there -- and this was a Washington
15 airport -- they would call the local staff sergeant
16 and he would be the counterpart of the Bishop at
17 the church or Mr. Gosling in Seattle and they
18 would tell the staff sergeant that they wanted cars
19 moved and you would get a number of privates, or
20 corporals off duty and sometimes they wore their
21 uniforms and would just move cars.

22 I think I have outlined in general, the
23 major factors and I think it is appropriate to
24 call our witness.

25 THE COURT: Yes, but I want to know if

1
2 Mr. Hipple wishes to make any statement.

3 MR. HIPPLE: A few brief comments:

4 For a starter, this revenue ruling, referred
5 to as plaintiff's exhibit five, I would like to
6 note where that came from.

7 THE COURT: Plaintiff's exhibit five.
8 That is the ruling.

9 MR. HIPPLE: 66-381.

10 Now, in this case the audit was done here
11 because Avis national headquarters is in Garden
12 City.

13 As a result of the examinations the revenue
14 agent who did the examination of the income tax
15 return raised this question and I would guess
16 realized the import of the problem -- not only
17 having Avis involved but also other rental companies--
18 he requested technical advice from the revenue
19 office in Washington. This advice was sent back --
20 both parties being involved in the process of
21 sending in briefs to the national office -- and
22 the advice came back that in the opinion of the
23 national office the individuals were employees of
24 Avis and I presume the people in Washington who did
25 that realized the import and they modified the

1
2 advice given with respect to this particular
3 case and published it as a revenue ruling.

4 So, it is not only a publication in general
5 but it came out of this particular case.

6 THE COURT: I gathered as much when I read
7 the other papers and that is why I asked Mr.
8 Layton questions with regard to it.

9 MR. HIPPLE: Yes, that is the derivation.

10 I had planned to offer the Court a copy.

11 THE COURT: It is in.

12 MR. HIPPLE: Yes, we solved that problem.

13 Now, I haven't yet seen Mr. Layton's brief --

14 THE COURT: I know. He tells me he mailed
15 you one.

16 MR. HIPPLE: Government mail system --

17 THE COURT: Oh, that's bad.

18 You sent me your copy.

19 MR. LAYTON: I mailed Mr. Hipple a copy.

20 MR. HIPPLE: I hadn't received it so I can't
21 respond directly but I am aware of the kind of
22 cases he dealt with in there.

23 All I want to point out at this point, and
24 I would like to really expand the skeleton in the
25 revenue ruling -- what I would really like to

1
2 point out is that there are a number of factors;
3 I think Mr. Layton said 16, but you have to look
4 at them in the light of a particular individual
5 and kind of function you are talking about.

6 Here we are talking about car shuttlers and
7 one of the factors all the courts looked at is the
8 control factor; how much control does Avis have
9 over these individuals.

10 The position of the ruling and one that I
11 would like to expand -- how much control could you
12 have.

13 When you give him the car and keys and you
14 are telling him "Go there" what else can you do?
15 He is in the car, driving, unless you have another
16 employee of Avis saying "Make a left here and a
17 right here" which is unrealistic.

18 Every one of these factors has to be
19 considered in the light that you are dealing with
20 a very limited duty here.

21 THE COURT: And if something occurs between
22 the time he tells him to take a car from A to B,
23 if something occurs on that trip that Avis might
24 not like they don't have to hire him again.

25 MR. HIPPLE: I was going to make that comment.

1
2 This is with respect to the hiring and
3 firing question.

4 This is true of any independent contractor
5 within that fine line.

6 You see, it is not a question of hiring
7 with no right to fire. They have the right to
8 fire. If he has had an accident or robbed a bank --
9 forget it. No more cars and one of the car
10 shuttlers said he had a car and didn't get along
11 with controlling management and he was told he
12 couldn't run cars any more and they, in effect,
13 fired him by not allowing him to do it again.
14 That is the only kind of firing you could have in
15 the situation but it is a right, indirectly.

16 I think from Mr. Layton's comments it is
17 obvious that we are going to have a problem here.

18 We are not able to sit down and say
19 specifically, from coast to coast the shuttler does
20 this. It differs in practically every city we
21 went to. In some cities there are independent
22 businesses -- which is what the first four plain-
23 tiff's exhibits are -- Avis calls them independent
24 businesses and they are in the business of
25 shuttling cars.

1
2 I asked Mr. Gosling, who runs just such
3 a business, did he withhold taxes and he said
4 he didn't either.

5 The Avis in California, using the Mormon
6 church, there are situations where they use Avis
7 full time employees to move the cars.

8 In other places they have people coming
9 down to the garage and the car control manager
10 yells "I have two or three cars to move" and Avis
11 provides the shuttled car, the shuttler moves it
12 and they pay him the money to come back.

13 Again, it is all with respect to the kind
14 of occupation we are dealing with and relating
15 the factors to the situations involved.

16 One of the questions you asked earlier during
17 Mr. Layton's comments, really pin points the
18 reason the case came up and the government has
19 taken the position it has.

20 Although it was indicated that this right to
21 pick up a car here, drop it off there, may be an
22 incidental part of the business this business is
23 a highly competitive one and it is the kind of
24 situation if you don't do it and the others do,
25 that will effect your position. So, whether

1
2 incidental or not, it is something the company
3 has to do.

4 It may be irregular but there is going to
5 be a constant need to move the cars back and forth
6 and without this Avis is not going to have the
7 cars to rent unless the car is moved. So, it is
8 an intrical part of the business.

9 Now, that is really how the case came up.
10 If you don't have the people doing this you won't
11 be in business.

12 THE COURT: A simple question: Is that why
13 it was not brought in the tax court?

14 MR. HIPPLE: The tax court has no jurisdiction
15 over this kind of tax; only over income, state,
16 gift and certain private taxes.

17 THE COURT: So, it is the district court.

18 MR. HIPPLE: Either here or the court of
19 claims.

20 That is all the comment I would like to make
21 at this time.

22 On the briefing schedule, while here, I
23 would like to expand on the ruling itself. Would
24 you like a specific time?

25 THE COURT: Do you want to do it now?

1
2 MR. HIPPLE: I would rather do it in
3 writing.

4 THE COURT: Fine.

5 Mr. Layton, call your first witness.

6 MR. LAYTON: Yes.

7 Mr. Hale.

8 THE CLERK: Raise your right hand.

9 E D W I N D. H A L E, having first been
10 duly sworn by the Clerk of the Court took the
11 witness stand and testified as follows:

12 THE CLERK: State and spell your name for
13 the court reporter.

14 THE WITNESS: Edwin D. Hale, H-a-l-e; 101
15 West Riverdale, Orange, California.

16 DIRECT EXAMINATION

17 BY MR. LAYTON:

18 Q By whom are you employed, Mr. Hale?

19 A Avis Rent-A-Car System Inc.

20 Q Where are you employed?

21 A Anaheim, California.

22 Q What position do you hold with Avis?

23 A City manager.

24 Q For how many years have you been employed
25 by Avis?

1
2 A Nine years.

3 Q When did you first become employed by Avis?

4 A March, 1963.

5 Q In what capacity were you first employed by
6 Avis?

7 A As a rental agent.

8 Q At what location?

9 A Phoenix, Arizona, Sky Harbor Airport.

10 Q What function did you perform for Avis as
11 a rental agent?

12 A A rental agent has direct responsibility to meet
13 the public and handle transactions between our customers
14 and Avis as far as filling out contracts; rental contracts,
15 checking driver's licenses, credit cards and taking reserva-
16 tions over the counter and over the telephone.

17 Q Did you move on to a position following your
18 position in Phoenix, as a rental agent?

19 A Yes, I moved on to station manager.

20 Q You became station manager?

21 A Yes

22 Q Where?

23 A Ontario, California.

24 Q How long were you a station manager in
25 Ontario California?

2 A Approximately a year and a half.

3 Q And what position did you hold following that
4 of station manager in California?

5 A I moved from California there to San Francisco
6 California to become a supervisor at San Francisco Airport.

7 Q For Avis?

8 A For Avis Rent-A-Car System.

9 Q For how long did you hold that position?

10 A Approximately six months.

11 Q And where were you employed, I assume by Avis,
12 after that?

13 A I was transferred to the Island of Hawaii in Hawaii.

14 Q What position did you hold in Hawaii?

15 A Island manager.

16 Q For the entire island?

17 A The island of Hawaii, yes.

18 Q How long did you hold that position?

19 A One year.

20 Q Following that year were you transferred to
21 another position?

22 A Yes, Houston, Texas as a field director.

23 Q For all of Houston?

24 A For six mid-west states.

25 Q Which states did that cover?

1
2 A Oklahoma, Texas, Louisiana, Mississippi -- I missed
3 one somewhere -- Missouri, I guess.

4 Q How long did you hold that position?

5 A Approximately one year.

6 Q Where were you stationed following that
7 position?

8 A From Houston I went to Baltimore, Maryland as a
9 district manager.

10 Q And what did your district comprise?

11 A The district in Baltimore was Baltimore Friendship
12 Airport and the downtown location.

13 Q Not the Washington Airport?

14 A No.

15 Q So you were in charge of the Baltimore area
16 and the airport there?

17 A Yes.

18 Q How long did you serve in that capacity?

19 A Approximately six months.

20 Q And then, after that?

21 A I was transferred to Washington D.C. as district
22 manager for Dulles Airport and Washington National Airport.

23 Q So you were district manager for Dulles and
24 Washington National Airport?

25 A Yes.

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Q How long did you remain in that capacity?

A Approximately three years.

Q Following your duties as district manager in Washington where were you stationed?

A Anaheim, California, city manager.

Q What is city manager as distinguished --

A City manager has direct responsibility for his own vehicles, where district manager does not.

Q How long did you remain in the capacity of city manager at Anaheim?

A I have been there approximately three and a half years and I am still there.

Q That is your present position?

A Yes.

Q So, in your nine years of employment by Avis, have you become familiar with the various functions of the persons who staff a car rental station for Avis?

A Yes.

Q And what categories of personnel staff are there at such a station?

A Rental agent which we talked about before; service agent and mechanic.

Q Now, in your various capacities with Avis, you have been a station manager so you have run a station

1 and you have held positions substantially higher than that.

2 You have managed a city area, you have been a district
3 manager and --

4
5 THE COURT: Don't forget the island
6 managership in Hawaii.

7 I guess your the only guy I know who came
8 back to the states after that.

9 Q Can you tell us in all of your experience and
10 capacities with Avis whether you have had some familiarity
11 with the functions of people known as car shuttlers?

12 A Yes.

13 Q Have you also had experience with the function
14 of service agents?

15 A Yes.

16 Q As well as rental agents?

17 A Yes sir.

18 Q Just briefly, before we get into the area,
19 I wonder if you could give us just briefly, for the Court's
20 benefit, an indication of whom you report to and how the
21 structure of the company works.

22 Let's take it from the top down for a
23 moment.

24 There is a president of the company, is there?

25 A Yes.

1
2 Q Who works under him?

3 A We have a general manager of the company, vice
4 president and general manager; vice president of operations
5 of the company and six regional vice presidents.

6 Q Those are geographical regions?

7 A Geographical areas, yes.

8 Q Who reports to these regional vice presidents?

9 A The city manager as well as reporting to his own
10 manager.

11 Q So there is a zone manager?

12 A Yes, and below them you go to your various stations.

13 Q Actual station managers operating their
14 individual stations?

15 A Correct.

16 Q And a station manager is responsible for all
17 the operations going on in its station?

18 A That is correct.

19 Q Now, do the personnel known as rental agents
20 wear a uniform?

21 A Yes.

22 Q What kind of uniform?

23 A Well, it is two piece complete red uniform for
24 females. There is also a man telling them how to wear it and
25 when to wear it.

1
2 Q What about males?

3 A Males wear a red jacket, white shirt, brown pants --
4 blue pants.

5 Q This is by company direction?

6 A Yes, company policy which is published in a manual.

7 Q So an individual, if he wants to be employed
8 by Avis complies with these uniform requirements as a rental
9 agent?

10 A Yes sir.

11 Q To whom does the rental agent report?

12 A The station manager.

13 Q Now, let's take the service agents.

14 What function does he perform at the station?

15 A A service agent is the man behind the scene, washing
16 the car, cleaning the ash trays, checking under the hood for
17 water, batteries, fuels the car and brings it up to where it
18 can be rented.

19 Q Does that individual wear a uniform?

20 A Yes.

21 Q What kind of uniform?

22 A They wear red shirts with Avis patches front and
23 rear and their name on the shirt, gray pants, red cap.

24 Q By the way, do the rental agents wear any
25 kind of button?

1

2

A Yes.

3

Q What kind of button?

4

A "We try harder"

5

Q Is that required?

6

A It is mandatory.

7

THE COURT: You never hope to get to

8

number one? I mean, "We try harder" --

9

THE WITNESS: It would ruin our whole

10

campaign.

11

Q You said you were familiar with car shuttlers.

12

Can you tell the Court what reason Avis had during the years

13

1962 through 1966, Mr. Hale, which are the years we are going

14

to be talking about here this morning -- those years, what

15

reason Avis had with dealing of a category of individuals

16

called car shuttlers?

17

A To move cars from point A to point B and in most

18

cases that was brought in by some convention, some huge

19

business function that would happen in the city that caused

20

all the cars to be rented in one location and left at another

21

location.

22

Q There was an imbalance as to the location of

23

cars as a result of a number of factors?

24

A Right.

25

Q Would you tell us the kinds of factors that

bring about the imbalance in the location of cars?

A Holidays, weather, conventions; different periods of the year -- summer time, such as your tourist areas.

Q Are the number of cars that you have to move from one place to another, is that number predictable?

A No sir.

Q Now, turning our attention once again briefly to the rental agent and service agents, do those people have to go through any kind of channels in order to become employed by Avis?

A Yes.

Q Do they have to fill out an employment application form?

A Yes.

THE CLERK: One blank application form marked plaintiff's exhibit 6 for identification.

(So marked)

THE COURT: Would you look at it now so we don't have to go through the motions again. If it is okay let's put it right into evidence.

That is the application form filled out by any individual who wants to work for Avis.

(pause)

MR. HIPPLE: No objection, your Honor.

THE COURT: Received.

THE CLERK: One blank application form
marked plaintiff's exhibit 6 in evidence.

(So marked)

DIRECT EXAMINATION

BY MR. LAYTON CONTINUING:

Q Mr. Hale, I show you plaintiff's exhibit six
in evidence and I ask you if that is a form of application
that you referred to?

A Yes it is.

Q And a person applying for a job as a rental
agent or service agent would have to fill out that form?

A Yes.

Q And supply all that information to Avis?

A Correct.

Q And that includes marital status, address,
social security number, driver's license number, previous
employment, education, three references from employers or
relatives, military service and salary desired as well as
certain other questions concerning physical disability or
past possible criminal history, correct?

A Yes.

Q All the information called for on this form?

A Yes.

Q Now, are any interviews required of prospective rental or service agents?

A Very definitely.

Q Do you know how many?

A Two to three interviews are usually necessary.

Q By whom?

A The station manager will normally interview a service or rental agent and if approved by him the application is forwarded to the city or district manager who would then interview the employee and hire them if they were acceptable and met all the qualifications.

Q Do you know if in that interview process a written employment test is required of an applicant?

A Yes it is.

MR. LAYTON: I would like to have this copy of an employment test marked as an exhibit.

THE COURT: Any objection?

MR. HIPPLE: No objection.

THE COURT: Received.

THE CLERK: Copy of blank employment test marked plaintiff's exhibit number 7 in evidence.

(So marked)

Q Mr. Hale, I show you a document in evidence as plaintiff's exhibit 7 and I ask you if that is a blank

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employment test form?

A Yes.

Q That is required to be taken by the applicant?

A Yes, all employees are required to take it.

Q Now, Mr. Hale, turning to -- incidentally,
if a person fails that test they are not hired, correct?

A That is correct.

Q Are the references of applicants checked by
Avis?

A Yes they are.

Q Their past employment, is that checked?

A Yes.

Q Now, turning to the category of individuals
known as car shuttlers, are any application forms filled out
by car shuttlers?

A No sir.

Q Are any interviews given car shuttlers?

A No sir.

Q Are any employment tests given to car
shuttlers?

A No sir.

Q Are car shuttlers ever required to wear
uniforms?

A No sir.

1
2 Q Now, you indicated that certain dress
3 requirements are made for rental agents?

4 A Yes sir.

5 Q And for service agents.
6 Any of these dress requirements required for
7 car shuttlers?

8 A No.

9 Q They can do what they do wearing anything
10 they care to, is that correct?

11 A Yes sir.

12 Q Now, once again, with respect to rental agents
13 and service agents, do they participate in any Blue Cross,
14 Blue Shield plan maintained by Avis?

15 A Yes.

16 Q Do they have afforded to them any life insurance
17 once benefits?

18 A Yes.

19 Q Do they get vacations?

20 A Yes.

21 Q Do they get sick days?

22 A Yes.

23 Q Are they provided with a pension plan?

24 A Yes sir.

25 Q Do they have regular hours of work?

1
2 A Yes.

3 Q Do they, upon occasion, work in shifts of
4 a certain number of hours?

5 A Yes.

6 Q Do they have a paid lunch hour?

7 A Yes they do.

8 Q Do you know what kind of work week they work;
9 how many days?

10 A Five days, 40 hours a week.

11 Q Now, Mr. Hale, is there any seniority that
12 applies in the employment of rental agents and service agents
13 and the assignment of duties to them?

14 A Yes.

15 Q Tell us how that works?

16 A Shifts are assigned by seniority.

17 To explain that, a girl with the company, the longest
18 has a choice of what shift hours and days off she wants,
19 which is the same for service agents also.

20 Q Does Avis concern itself with the punctuality
21 of its employees?

22 A They are required to punch in and out on a time clock.

23 Q The rental agents?

24 A Yes.

25 Q The service agents?

1
2 A Yes.

3 THE COURT: How about the city manager?

4 THE WITNESS: I write that in. We are
5 not required to punch a time clock.

6 THE COURT: You are not.

7 Are you required to wear a certain uniform?

8 THE WITNESS: I am required to wear the
9 "We try harder" button.

10 THE COURT: But you are in every day
11 clothes?

12 THE WITNESS: Yes.

13 THE COURT: I notice most of the questions
14 with regard to these rules, Mr. Layton has
15 repeatedly said the rental agent, station manager
16 but never city manager.

17 A lot of these things don't apply to you
18 as far as a certain uniform or punching a clock.

19 THE WITNESS: If we work in front of the
20 public we are required to wear a uniform, yes.

21 THE COURT: But for performance of your
22 own work as city manager you only wear the
23 button?

24 THE WITNESS: Correct.

25 Q You are required to wear a jacket, shirt --

1
2 A Yes, coat and tie.

3 Q You are required to do that?

4 A Yes.

5 Q Are you required to comport to certain
6 standards with respect to your personal grooming and hair
7 style?

8 A Very definitely.

9 Q Would you tell the Court what requirements
10 you are required to adhere to?

11 A Your hair is to be no longer than collar length;
12 no sideburns below the ear lobe; no handlebar moustaches.

13 Q Do those requirements apply to car shuttlers?

14 A No.

15 Q They can have hair of any length, dress any
16 way that they want to?

17 A Correct.

18 Q In the event you have employees, rental
19 agents or service agents, who are not punctual, are you
20 aware of any policy with respect to that, by Avis?

21 A Yes, there is a policy.

22 Q What is that?

23 A Consistent tardiness or absenteeism results in
24 termination.

25 Q You are fired?

1
2 A Correct.

3 Q Now, a person who is terminated, as you put
4 it, by Avis, loses his fringe benefits?

5 A Yes sir.

6 Q He loses his group hospitalization?

7 A Yes sir.

8 Q He loses his life insurance benefits?

9 A Yes sir.

10 Q And he loses the general category of fringe
11 benefits he would have had at Avis?

12 A Yes.

13 THE COURT: He doesn't get the usual
14 thirty day period to transfer to group health,
15 like everyone else?

16 MR. LAYTON: That is not what Avis does
17 him. That is in his dealing with group health.

18 THE COURT: Yes, most of the policies you
19 get thirty days to transfer.

20 MR. LAYTON: I make no issue over that.

21 THE COURT: The form of your question made
22 it specific that he lost everything with no rights
23 of redemption. .

24 Of course, most important, he loses the job.

25 Q But, as far as Avis is concerned he is no

1
2 longer in their group health program, is that right?

3 A That is correct.

4 Q Now, did, during the years in issue, Avis
5 have a policy with respect to entering into writings with
6 car shuttlers; any kind of a written document for the
7 car shuttlers?

8 A Vehicle transfer contracts.

9 Q Let me show you a document which has been
10 marked government's exhibit A in evidence and I ask you if
11 that is a copy of the document you referred to; a vehicle
12 transfer contract?

13 A Yes it is.

14 Q And do you require shuttlers to sign such
15 contracts?

16 A Yes.

17 Q Every time a car is moved?

18 A Yes.

19 Q In other words, there must be a contract
20 executed for each movement of an Avis car by a shuttler?

21 A Yes sir.

22 Q Can you tell the Court how the shuttlers were
23 paid -- I mean, what they paid -- I don't mean with cash or
24 check. I mean, the manner in which the amount of money they
25 would get was determined?

1
2 A In most cases the city manager would fix a flat fee
3 to move a car from one location to another.

4 Q So there was a fixed fee?

5 A That is correct.

6 Q For moving a car from point A to point B?

7 A Correct.

8 Q Did the shuttler get reimbursed for any
9 expenses such as tolls or gas that he might incur?

10 A Yes sir.

11 Q Now, in your experiences, are there necessarily
12 direct dealings between Avis and individual car shuttlers or
13 do you on occasion deal with some contact person in dealing
14 with car shuttlers?

15 A Normally, we call someone who arranges to have the
16 people there move the cars.

17 Q What kind of training does Avis furnish to
18 car shuttlers?

19 A None.

20 Q Furnishes no training at all to car shuttlers?

21 A No sir.

22 Q What kind of people are you referring to when
23 you say there are people you contact in dealing with car
24 shuttlers?

25 A Bishop Bradford at the Mormon church was a contact

1
2 for us. He himself never shuttled to my knowledge.

3 Q This is a situation that you yourself
4 participated in?

5 A Yes sir.

6 Q As the station manager?

7 A Yes.

8 Q And you would contact Bishop Bradford?

9 A Yes sir.

10 Q And tell us what you would do?

11 A I would call -- if it was determined that we had to
12 move cars from one location to another -- I would call
13 Bishop Bradford and say, for example, "We have 30 cars to
14 move from Ontario to Anaheim" and he said "Fine. I will
15 see that it is done."

16 Q Do you know how he had those cars moved?

17 A He evidently had people in his own church
18 contacted who donated their time.

19 Q Do you know how the payment was made with
20 respect to the car movement?

21 A I issued a check to the Mormon church.

22 Q Directly to the Mormon church?

23 A Yes.

24 Q And the Bishop chose the people who did the
25 shuttling?

1
2 A I assume so.

3 Q You don't know, actually?

4 A I have no idea.

5 Q All you know is that these cars were
6 satisfactorily moved from point A to point B?

7 A Right.

8 Q You had no further or other contact with the
9 individual people who shuttled them?

10 A That is correct.

11 Q Did you, Mr. Hale, tell these people what
12 route to take in moving the cars?

13 A No sir.

14 Q In any of your experience at Avis did you
15 ever direct shuttlers as to what driving route to take?

16 A No sir.

17 Q On occasion were there different routes that
18 could be taken?

19 A Oh, yes.

20 Q Can you tell the Court whether, to your
21 experience, there were occasions when actual negotiations
22 might take place with respect to a fee for a particular trip?

23 A Yes, there are occasions.

24 Q Under what circumstances?

25 A If a car is in a very remote place we might go to

1
2 an airline employee who has the free transportation and
3 negotiate with him to bring the car back.

4 Q So, when that circumstance of bringing it
5 back, say from Pittsburgh to California, that particular fee
6 paid for performing that particular service could have been
7 lower on one occasion, depending upon negotiations with that
8 person, and higher on a different occasion?

9 A Yes.

10 Q So even that fee fluctuates?

11 A Yes sir.

12 Q And it was arrived at by arm's length
13 negotiations, correct?

14 A That's right.

15 Q Did, in your own experience, a car shuttler
16 have the ability to refuse to move a particular car, take a
17 particular contract?

18 A Certainly.

19 Q Did that ever happen in your experience?

20 A Many times.

21 Q Can you give us circumstances that you recall,
22 when such an occasion would happen?

23 A Moving cars from Washington National Airport down to
24 the District of Columbia.

25 If you ask people to move cars at five o'clock, they

1
2 are going to turn you down.

3 Q Why?

4 A It might take three hours to get there.

5 Q Because of traffic?

6 A Yes.

7 Q So a trip like that wouldn't be a desirable
8 trip?

9 A That's right.

10 Q Would you give an example as compared to that,
11 that is a desirable trip?

12 A The same time of day going from Washington National
13 Airport to Dulles Airport.

14 Q And in those circumstances a person could
15 possibly move two cars in the same amount of time?

16 A Yes.

17 Q And he could make twice as much in fee for
18 himself?

19 A Yes.

20 Q Mr. Hale, to your knowledge was there anything
21 to prevent a shuttler from moving cars for Hertz or National,
22 your competitors?

23 A No sir.

24 Q Nothing at all.

25 Are you aware of instances where shuttlers did

1
2 move cars for your competitors?

3 A Yes.

4 Q Can you tell the Court of such instances?

5 A The airport shuttlers in Washington, D.C. area
6 worked for National, Budget, Hertz.

7 Q You were district manager, I believe you said,
8 at Washington National Airport, at one time?

9 A Yes.

10 Q Can you tell me how, if at all, you secured
11 shuttlers to move cars?

12 A We had a contact at the air force base, a staff
13 sergeant, I believe, and he would arrange to have people move
14 the cars when we determined the need.

15 Q You simply phoned him?

16 A Correct.

17 Q And told him how many cars had to be moved?

18 A Yes sir.

19 Q Did you have direct dealings with the
20 shuttlers at all -- the air force personnel?

21 A No sir.

22 Q So you didn't even see the people moving the
23 cars?

24 A That is correct.

25 Q To your knowledge did shuttlers who moved cars

1
2 for Avis hold other full time jobs?

3 A In most all cases, they did.

4 Q Most all cases they did?

5 A Yes sir.

6 Q So is it fair to say they were moonlighting
7 when shuttling cars?

8 A Yes sir.

9 Q And the categories of these people you describe
10 are armed forces personnel, such as through the staff sergeant,
11 you testified about?

12 A Yes.

13 Q Airline personnel such as you mentioned?

14 A Yes.

15 Q Housewives or other persons who might have been
16 retained by Mr. Bradford?

17 A That is correct.

18 Q Or retired persons from other jobs who had time
19 on their hands?

20 A Correct.

21 Q And these individuals would have been on the
22 payrolls of other organizations, correct?

23 A Yes sir.

24 THE COURT: One moment.

25 You said you would call the staff sergeant.

1
2 You wouldn't even see who the shuttler was?

3 THE WITNESS: Correct.

4 THE COURT: Well, who has control of the
5 cars?

6 THE WITNESS: I didn't personally see them.
7 The service agent, probably.

8 THE COURT: Yes.

9 Someone would have to give him a key, tell
10 him where to go, see the license, as you say they
11 do.

12 THE WITNESS: Yes, at the airport location
13 they had a dispatch.

14 THE COURT: I just didn't want the record
15 to show that no one saw him; that people could
16 walk on your lot, pick up a car and leave.

17 THE WITNESS: Oh, no.

18 THE COURT: All right.

19 You may proceed.

20 Q To your knowledge, Mr. Hale, under these
21 circumstances did Avis had anything to do with deciding which
22 trip was given to which person?

23 If the assignment was to move five cars to
24 Dulles Airport and ten cars to Friendship Airport and one
25 trip was better than another, did Avis have anything to do

1
2 with deciding which shuttler got which trip?

3 A No sir.

4 Q It was decided by the staff sergeant or
5 someone outside of Avis?

6 A Or amongst themselves.

7 Q As far as Avis was concerned was there any
8 seniority it applied in dealing with shuttlers?

9 A No.

10 Q As distinguished from what you said about the
11 rental agents with seniority in the company as to choice of
12 shifts and things like that, as far as shuttlers were
13 concerned, no such concept existed at all?

14 A No sir.

15 Q Did Avis keep any seniority lists with
16 respect to shuttlers?

17 A No.

18 Q Is it true that a shuttler got paid the same
19 fee if he moved a car the first time he moved it as if he
20 moved it the thousandth time he moved it; it was the same
21 fee?

22 A Yes.

23 Q Is there any regular work period for shuttlers?

24 A No.

25 Q Is there any particular time the work took place?

1
2 A No.

3 Q It's possible if a shuttler turned up Monday
4 morning at 9:00 a.m. that he would sit around all day and
5 not do anything?

6 A Yes.

7 Q He could come to a station at that time each
8 day and earn not a dime, is that correct?

9 A Yes.

10 Q Not get one car to shuttle because no cars
11 were available, is that right?

12 A Yes.

13 Q Now Mr. Hale, to your knowledge did shuttlers
14 ever receive vacations?

15 A No.

16 Q Was there any way, any way at all, that a
17 shuttler, male or female, could qualify for pension rights
18 from Avis?

19 A No.

20 Q Any way for a shuttler, male or female, to
21 qualify for Blue Cross or Blue Shield group rights?

22 A No.

23 Q Was there any bonus paid or Christmas bonus
24 pay available to shuttlers?

25 A No.

1
2 Q Shuttlers ever receive sick days?

3 A No.

4 Q Holiday pay?

5 A No.

6 Q Did shuttlers receive ever, any fringe
7 benefits from Avis?

8 A No.

9 Q Shuttlers, you told us, do not wear uniforms
10 and were not required to?

11 A That is correct.

12 Q They could wear anything they wanted to?

13 A Yes.

14 Q Women as well as men shuttlers?

15 A Yes sir.

16 Q They were not required to wear an Avis button?

17 A No sir.

18 Q Mr. Hale, did you or to your knowledge, did
19 anyone in Avis -- did shuttlers ever tell anyone they were
20 Avis employees or entitled to benefits from Avis?

21 A No.

22 Q Did shuttlers ever wash cars?

23 A No.

24 Q Did shuttlers ever change tires?

25 A No.

1

2

Q Did shuttlers ever make repairs to cars?

3

A No.

4

Q Did shuttlers ever rent cars to customers?

5

A No.

6

Q And I gather shuttlers are not permitted to

7

perform any of those functions?

8

A That is correct.

9

Q Do you know what happened if a shuttler got

10

a speeding or other traffic ticket while moving a car?

11

A It was their liability.

12

Q They paid for it?

13

A Yes sir.

14

Q Do you know of any time when Avis paid for

15

such a ticket for a shuttler?

16

A No sir.

17

Q Was that made clear by Avis to prospective

18

shuttlers or people who dealt with shuttlers, that that was

19

their responsibility?

20

A No sir.

21

THE COURT: It was never made clear?

22

THE WITNESS: I never saw the shuttler.

23

What the Bishop Bradford might have told him --

24

Q Did you ever reimburse anyone for having paid

25

a ticket?

1
2 A No sir.

3 THE COURT: There is nothing in the
4 contract that the shuttler signs that indicates
5 that that liability would be his or her
6 responsibility?

7 THE WITNESS: No sir.

8 Q Were there company rules or policies or
9 manuals with respect to the functions performed by rental
10 agents and service agents, generally?

11 A Yes sir.

12 Q Are there such policies with respect to other
13 categories of employees?

14 A Managers.

15 Q Rules and regulations for managers and other
16 types of personnel?

17 A Yes.

18 Q To your knowledge are there any rules or
19 regulations or any kind of publications by the company with
20 respect to the conduct or performance of duties by shuttlers?

21 A No.

22 Q And did Avis give training to its other
23 employees such as rental agents and service agents?

24 A Yes.

25 Q They give a course for them?

1
2 A Yes.

3 Q Does Avis give any training to shuttlers at
4 all?

5 A No.

6 MR. LAYTON: No further questions.

7 THE COURT: We will take a short recess.

8 (Recess taken)

9 E D W I N D. H A L E, having previously been
10 sworn by the Clerk of the Court resumed the witness
11 stand and further testified as follows:

12 CROSS EXAMINATION

13 BY MR. HIPPLE:

14 Q Mr. Hale, was your deposition taken in
15 connection with proceeding at an earlier date?

16 THE COURT: Excuse me.

17 Try to keep the courtroom still. There is
18 too much noise here.

19 A Yes sir.

20 Q You started to work for Avis in 1963?

21 A Yes.

22 Q During 1963 to 1966 you were only in Phoenix
23 and Ontario, California?

24 A And San Francisco.

25 Q So only in those three areas you were

1
2 familiar with the car shuttling operation during the years
3 in suit?

4 A 1966 I was also in Washington, D.C.

5 Q That is when you were talking about the staff
6 sergeant in Washington?

7 A Yes.

8 Q Talking about the uniform requirements you
9 mentioned the service agents and counter people. How about
10 the mechanics?

11 A Yes.

12 Q What kind of uniform do they wear?

13 A The same as the service agents.

14 Q Do you know of any occasion since you have
15 been with Avis that one of these cars were moved without some
16 kind of vehicle transfer contract or some other document?

17 A No sir.

18 Q Is that required in every case?

19 A It is company policy.

20 Q Do you know of any case where the shuttler
21 has refused to sign one of those vehicle transfer contracts?

22 A No.

23 Q Would he be allowed to take a car if he
24 wouldn't sign?

25 A He would not be allowed.

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Q So the condition of him taking the car is that he sign the contract?

A Yes.

Q Is the meaning or purpose of that contract explained to him when he signs it?

A Not by agents.

Q If the service agent or mechanic or full time employee moves a car from point A to point B, as you put it before, is he given additional or different instructions or information than a car shuttler would be given?

A Where to go, when to take it and when we expect him there.

Q Is that different from the shuttlers instructions?

A We tell him to take the car from point A to point B.

Q What is the difference or what is different that you tell a shuttler?

A We might give him directions. We tell them which employee would go; about getting gas.

Q What about a shuttler, if he needed gas?

A Like a customer -- if he ran out of gas and we reimbursed him.

Q Does the shuttler bear expenses with shuttling operations?

1
2 A No.

3 Q If a mechanic or other employee for Avis
4 moving a car gets a ticket who pays?

5 A The person driving the car.

6 Q So that means anyone and not Avis itself?

7 A Right.

8 Q When the car is being driven either by a
9 service agent or mechanic or one of the shuttlers, does Avis's
10 liability insurance cover damage for the car if there is an
11 accident?

12 A Liability -- you mean as far as the other parties or
13 our car?

14 Q Your car?

15 A Yes.

16 Q During the period in San Francisco were you
17 familiar with a contract between Avis and a local of the
18 Teamster's Union?

19 A Yes sir.

20 Q Are you familiar with the terms of that
21 contract dealing with these part time shuttlers?

22 A Vaguely.

23 Q Would you describe what this is, to the best
24 of your recollection -- well, let me have this marked--

25 THE WITNESS: It is spelled out as a

1

1
2 separate classification of a shuttler.

3 THE CLERK: Five page document marked
4 government's --

5 THE COURT: Any objection?

6 MR. LAYTON: May I see it, please?

7 THE COURT: Surely.

8 (pause)

9 MR. LAYTON: The only objection I have is
10 this deals with a category of people not in
11 issue here.

12 THE COURT: I understood him to say there
13 was a special reference there to shuttlers.

14 Is this the bargaining agreement between
15 Avis and the union?

16 MR. LAYTON: Yes.

17 I don't object to its admissibility. I
18 just point out with respect to it that those
19 taxes and people are not in issue because they were
20 withheld --

21 THE COURT: I know that. I just want to
22 see how they categorized each group.

23 THE CLERK: Five page document marked
24 government's exhibit B in evidence.

25 (So marked)

1
2 CROSS EXAMINATION

3 BY MR. HIPPLE CONTINUING:

4 Q A copy of the union agreement with Avis in
5 San Francisco during the period we are talking about?

6 A Yes.

7 Q And you began to describe the relationship
8 of these part time shuttlers. Would you describe what their
9 situation is under that contract?

10 A I am not that familiar with the contract itself.

11 THE COURT: The contract will speak for
12 itself.

13 MR. HIPPLE: I just wondered if there is
14 anything about the individuals that he is aware
15 of outside the contract.

16 THE COURT: Ask him that.

17 Q The contract will have the terms of how they
18 are dealt with.

19 I am wondering now, from your own experience
20 of dealing with those individuals, Avis treats them; how they
21 are hired; how they are found?

22 A They go through the same type of hiring any other
23 employee would.

24 Q Do they wear uniforms?

25 A No.

1
2 THE COURT: Does the agreement between
3 Avis and the union require you particularly,
4 as city manager, over there, to give special
5 consideration to the terms of that agreement,
6 vis-a-vis a shuttler as contracted with vis-a-vis
7 an employee?

8 THE WITNESS: As I understood the question
9 the only difference is the wage scale.

10 Q The shuttlers or whatever they are called,
11 under the agreement, do not wear uniforms or any other kind
12 of identification to indicate they work for Avis?

13 A As an employee paid like any other employee they
14 have a company I.D. card.

15 Q Would the individual here be the same
16 individual over a period of time; always the same ones?

17 A No, there are regular employees who punch in on a
18 time clock.

19 Q Eight hours a day five days a week working a
20 regular shift like anyone else?

21 A Yes.

22 MR. HIPPLE: That's all the questions I
23 have.

24 THE COURT: You said there are times when
25 regular employees like a service or maintenance

man might do the work of a shuttler?

THE WITNESS: Yes.

THE COURT: Does he get special payment for that like a shuttler?

THE WITNESS: No.

THE COURT: Does he do it in the period of his employment and if he doesn't do it in that period does he get overtime?

THE WITNESS: Yes.

THE COURT: With regard to a regular employee, if it is during work hours that is part of his job? He doesn't get paid specially for shuttling a car?

THE WITNESS: No.

RE-DIRECT EXAMINATION

BY MR. LANTON:

Q The Court asked you earlier about your dress and you indicated that you would wear a jacket and a button.

Is there Avis policy with respect to executives serving behind a counter?

A We have a policy within the company, starting with the president, that every manager spends so many days per year renting cars, washing cars, servicing cars.

Q During that period of time he wears a red

1

2

jacket and button?

3

A Yes.

4

THE COURT: You service a car?

5

THE WITNESS: Yes sir.

6

THE COURT: You take a demotion for that

7

period?

8

THE WITNESS: That is the only way to find

9

out what's going on.

10

THE COURT: Wouldn't you call that a

11

grease monkey in city parlance?

12

THE WITNESS: Yes, I become a flunkie.

13

MR. LAYTON: Nothing further.

14

Your Honor, I want to make a little further

15

argument.

16

The revenue ruling, your Honor, in our view,

17

it is simply the position of one of the two

18

litigants in this case. It has no higher standing --

19

THE COURT: I am sure --

20

MR. LAYTON: It is a self-serving finding in

21

this case.

22

The I.R.S. who is a litigant --

23

THE COURT: I am just wondering if you are

24

going to say that the revenue service rules and

25

regulations are just self-serving declarations?

1
2 MR. LAYTON: No, I am only talking about
3 in a contested piece of litigation in the federal
4 courts on the very issue before the Court.

5 The authority I can cite to your Honor --

6 THE COURT: Whether or not I would interpret
7 one way or the other is for me but I think --

8 MR. LAYTON: That is exactly the point I make.

9 The revenue ruling is not a question of
10 interpretation.

11 THE COURT: I think that goes right to the
12 heart of this issue.

13 MR. LAYTON: That is the issue and what the
14 case is, to set aside the revenue -- it has no
15 independent authority.

16 THE COURT: I am aware of that. That is why
17 I tried to narrow the issue from the beginning
18 because it goes to the heart of the problem -- the
19 nature of the word employee/employer/employee
20 relationship.

21 Okay. I understand.

22 MR. LAYTON: The plaintiff rests.

23 MR. HIPPLE: The government rests.

24 THE COURT: Now, I am sure you want opportunity
25 to submit post-trial memorandum briefs.

1
2
3 MR. LAYTON: Findings of fact and
4 conclusions of law.

5 THE COURT: I was going to suggest that
6 you -- you are going to order the minutes, I
7 am sure?

8 MR. LAYTON: Yes.

9 MR. HIPPLE: Yes.

10 THE COURT: I suggest that you submit
11 proposed findings -- both sides.

12 Usually, on proposed findings I usually
13 require specific reference to line and page of
14 the testimony.

15 MR. LAYTON: Mr. Hipple has a time problem.

16 THE COURT: He has got a time problem
17 because he is leaving his job.

18 MR. HIPPLE: I am leaving the 1st
19 August. I will be back the last three

20 THE COURT: So, you both want to submit
21 post-trial memorandums and proposed findings.

22 Do you want to cross with each other?

23 MR. LAYTON: We can do it simultaneously.

24 THE COURT: Under our rules we are not
25 required to cross on these things after trial,
anyway, but suppose you both do it simultaneously.

1
2 MR. HIPPLE: Well, I am leaving the end
3 of August. How about by then?

4 MR. LAYTON: August 31?

5 THE COURT: August 31, all papers in and
6 then I will give you my decision.

7 All motions you want to make either way
8 are reserved and make your motions in the papers
9 you will submit so the record is complete, anyway.

10
11
12
13 *

14 *

15 *

16 *

I N D E XWITNESSDirectCrossRe-direct

EDWIN D. HALE

Pg. 36

Pg. 68

Pg. 75

E X H I B I T SPLAINTIFF'SDESCRIPTIONIDENTIFICATIONEVIDENCE

1

license

Pg. 5

2

document

Pg. 6

3

document

Pg. 7

4

invoice book

Pg. 7

5

document

Pg. 20

6

application

Pg. 46

Pg. 47

7

test form

Pg. 47

DEFENDANT'S

A

document

Pg. 7

B

document

Pg. 72

828



EXHIBIT Plaintiff
WITNESS J. J. [unclear]
DATE 3-28-73

7/16/73

829

MUST BE RENEWED ON OR BEFORE EXPIRATION DATE

THE CITY OF SEATTLE
COMPTROLLER'S DEPARTMENT
DIVISION OF LICENSES AND STANDARDS
(BUSINESS LICENSE)
EXPIRES DECEMBER 31, 1966

ROBERT GOSLIND
DEA KING TRANSPORT CO
1619 E JOHN ST
SEATTLE WA 98102

EL 103397
S
8-13-64

This license is issued in conformity with Ordinance No. 22890, as amended, and must be posted in a conspicuous place at the location for which issued. No license issued under the provisions of this ordinance is transferable or assignable.

[Signature]
City Comptroller

FORM NO. L255

on the desk of -
BOB GOSLIND

Legend

A = Avis

H = Hertz

B = Budget

l = local deliveries

601 = Avis downtown

ST = Seattle Tacoma Airport

2001 = Budget downtown

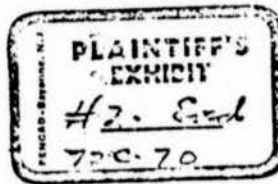
SSA = South Seattle Auction

TL = Avis Travelodge

8th = Hertz Garage downtown

7th = Hertz Office downtown

Bell boy = Rec'd. call thru
answering service via
Bell boy.



830



DAY: MON

DATE: 1/10/66

TIME: (FROM 1/7/66 00:00)

7:45

Pay Jerry's Cal fare 1.10

3:32 - Marty

3:45 - A

(Ballboy)

Line	From	Last man	To	Car	House	Driver	Total	Gas	Misc
1	APL	601	ST	728178	11V3	8:58 Eddy	10811 Name		phone 20
2	Ymca	-	-	728902	11V3	8:73 Eddy	911 Name		phone 102
3	-	-	-	728773	11V3	8:13 Eddy	911		phone 10
4	H.M.	3.T.	Run 18	Sal. Car	11V3	6:43 Eddy	811 Name		phone 10
5	Ymca	-	-	531111	11V3	7:35 Eddy			phone 10
6	-	-	-	53546	11V3	4:33 Frank			
7	-	-	-	Sal. Car	11V3	1:41 Chuck			
8	A	TL	9T	72942	11V3	7:21 Name			
9	-	-	-	72945	11V3	7:21 Eddy			
10	-	-	-	73012	11V3	8:60 Chuck			
11	-	-	-	73021	11V3	8:63 Frank			
12	H	ST	Run 18	53543	11V3	1:59 Name			
13	-	-	-	53522	11V3	6:42 Eddy			
14	-	-	-	53545	11V3	1:15 Chuck			
15	-	-	-	53546	11V3	1:04 Frank			
16	-	-	-	Sal. Car	11V3	2:23 Name			
17	-	-	-	-	11V3	6:4 Eddy			
18	-	-	-	-	11V3	6:45 Chuck			
19	-	-	-	-	11V3	2:27 Frank			
20	A	601	ST	72550	11V3	7:02 Name			
21	-	-	-	73003	11V3	8:41 Eddy			
22	-	-	-	73003	11V3	8:42 Chuck			
23	-	-	-	73017	11V3	8:56 Frank			
24	-	-	-	73020	11V3	8:04 Eddy			
25	-	-	-	73040	11V3	7:27 Eddy			
26	H	ST	Run 18	53540	11V3	2:43 Eddy			
27	-	-	-	Sal. Car	11V3	8:00 Eddy			
28	-	-	-	-	11V3	1:17 Eddy			
29	-	-	-	-	11V3	0:11 Eddy			
30	-	-	-	Sal. Car	11V3	1:11 Name			
31	A	601	ST	73009	11V3	7:22 Chuck			
32	B.H.	2001	SSN	Sal. Car	11V3	6:08 Eddy			
33	-	-	-	-	11V3	7:41 Name			
34	-	-	-	-	11V3	5:45 Frank			
35	-	-	-	-	11V3	7:04 Chuck			
36	A	TL	ST	73009	11V3	8:70 Name			
37	-	-	-	73048	-	8:20 Eddy			
38	-	-	-	73049	-	8:03 Jerry			
39	-	-	-	72937	-	7:11 Chuck			
40	-	-	-	-	-	-			

BACK
SIDE P.1

		1	2	3	4	5	6
From	To	Em No	License	Class			
Van, BC	ST	29548	A 1T 080	Near			
✓	✓		MA 603	S. 2.2.			
✓	✓	29141	MAY 859	Frank			
✓	✓	29525	A 1K 712	Jerry			
✓	✓	29582	M 1X 772	John			

D

DAY: MON

DATE: 4/10/66

TIME: (From 1/1/66 Swift)

7.45

Pay Jerry's Cal fare 1.10

8:30 - Marty

3:45 - B (bellboy)

Cond	Time	to	Car No	License	Driver	Total	Gas	Misc
A	601	ST	72579	AVS	828 Eddy	10.11 Home		phone 20
			72902	AVS	873 Eddy	9.11 Home		phone 10
			72973	AVS	813 Eddy	9.11 Home		phone 20
H	ST	Pin 18	Sale Car	ADK	693 Eddy	8.11 Home		phone 10
			55511	ADK	735 Eddy			phone 10
			55546	ADK	433 Frank			
			Sale Car	ADK	101 Chuck			
A	TL	ST	72942	AVS	721 Home			
			72968	AVS	791 Eddy			
			73012	AVS	860 Chuck			
			73021	AVS	863 Frank			
H	ST	Pin 18	55593	ADK	159 Home			
			55522	ADK	692 Eddy			
			55485	ADK	115 Chuck			
			55486	ADK	104 Frank			
	ST		Sale Car	ADK	293 Home			
				ADK	694 Eddy			
				ADK	689 Chuck			
				ADK	229 Frank			
A	601	ST	72550	AVS	712 Home			
			73003	AVS	871 Eddy			
			72993	AVS	802 Eddy			
			73017	AVS	856 Frank			
			72920	AVS	884 Eddy			
	ST	601	72940	AVS	727 Eddy			
H	ST	Pin 18	55540	ADK	293 Eddy			
			Sale Car	ADK	210 Chuck			
	TH			ADK	687 Eddy			
				ADK	06 Eddy			
	ST		Sale Car	ADK	691 Home			
A	601	ST	73009	AVS	172 Chuck			
B	601	ST	Sale Car	ADK	605 Eddy			
				ADK	761 Home			
				ADK	585 Frank			
				ADK	704 Chuck			
A	TL	ST	73009	AVS	870 Home			
			72998		820 Eddy			
			73017		883 Eddy			
			72937		711 Frank			
		(over)						

pl Eddy 101 2200
 pl Eddy 101 1925
 pl Eddy 101 1125 (Conting)
 pl Home 11 1800
 pl Home 11 935 + tax + fare
 pl Home 11 1000

EXHIBIT 2025
 WITNESS 2-14-73
 DATE 2-14-73

DAY: 421

DATE: 1/14/66

TIME: 9:30 - H

10:30 A (in car)

10:30 - B (backlog)

Guest From	To	Car No.	License	Driver	Total	Gas	Police
430 ST	TRC	79493	114	424 Dave	2.1	1.50	430 phone 10
440 ST	-	29618	BJA	085 Eddy	78.1	2.20	430 phone 10
450 ST	-	28484	AIK	731 Frank	9.1	4.10	430 phone 10
460 ST	-	72752	AVS	733 Dave			
470 ST	-	72707	A.S.	743 Eddy			
480 ST	-	72587	ALS	827 Frank			
490 ST	-	72512	AIK	373 Eddy			
500 ST	-	72435	AVS	712 Dave			
510 ST	-	72463	-	795 Frank			
520 ST	-	73007	AVS	873 Dave			
530 ST	-	72887	AVS	849 Eddy			
540 ST	-	73564	AVS	720 Frank			
550 ST	-	72991	KBR	266 Frank			
560 ST	-	72905	AVS	829 Dave			
570 ST	-	72998	AVS	719 Eddy			
580 ST	-	72510	AVS	820 Frank			
590 ST	-	72940	AIK	661 Dave			
600 ST	-	72940	AIH	604 Eddy			
610 ST	-	72859	ARM	347 Jerry	3.8	1.00	
620 ST	-	72970	ARM	136 Frank			
630 ST	-	72874	AVS	814 Dave			
640 ST	-	73519	-	748 Minnie	3.1		
650 ST	-	72754	-	857 Eddy			
660 ST	-	72754	-	800 Jerry	2.1		
670 ST	-	72978	-	709 Frank			
680 ST	-	72964	-	808 Dave			
690 ST	-	73033	-	796 Minnie			
700 ST	-	72981	-	824 Eddy			
710 ST	-	72981	-	825 Jerry			
720 ST	-	72981	-	825 Jerry			
730 ST	-	72981	-	825 Jerry			
740 ST	-	72981	-	825 Jerry			
750 ST	-	72981	-	825 Jerry			
760 ST	-	72981	-	825 Jerry			
770 ST	-	72981	-	825 Jerry			
780 ST	-	72981	-	825 Jerry			
790 ST	-	72981	-	825 Jerry			
800 ST	-	72981	-	825 Jerry			
810 ST	-	72981	-	825 Jerry			
820 ST	-	72981	-	825 Jerry			
830 ST	-	72981	-	825 Jerry			
840 ST	-	72981	-	825 Jerry			
850 ST	-	72981	-	825 Jerry			
860 ST	-	72981	-	825 Jerry			
870 ST	-	72981	-	825 Jerry			
880 ST	-	72981	-	825 Jerry			
890 ST	-	72981	-	825 Jerry			
900 ST	-	72981	-	825 Jerry			
910 ST	-	72981	-	825 Jerry			
920 ST	-	72981	-	825 Jerry			
930 ST	-	72981	-	825 Jerry			
940 ST	-	72981	-	825 Jerry			
950 ST	-	72981	-	825 Jerry			
960 ST	-	72981	-	825 Jerry			
970 ST	-	72981	-	825 Jerry			
980 ST	-	72981	-	825 Jerry			
990 ST	-	72981	-	825 Jerry			
1000 ST	-	72981	-	825 Jerry			

36 (102)

1300
1250
1175
450
250
845

12765

AVIS RENT A CAR VEHICLE TRANSFER CONTRACT

Contractor acknowledges that he received the vehicle below from Owner or Owner's Authorized Representative in good appearance and safe mechanical condition, and agrees to deliver it at the time and place and for the fee determined in the same condition as received, ordinary wear and tear excepted. Contractor agrees not to use said vehicle in any way other than for delivery as described herein, nor to transport any persons or property therein.

It is agreed that this contract in no way constitutes the contractor as an agent or employee of the owner of said vehicle or of Avis Rent a Car System, its members or licensor or licensor's subsidiaries.

CONTRACT SPECIFICATIONS

To Deliver Vehicle # 10172 Make Ford Model Mustang
Color Black License 145 STATE TX NUMBER 19
Additional Equipment _____
From _____ To _____
ARRIVAL TIME AND DATE _____
TRANSFER FEE \$ _____
ALLOWED EXPENSE \$ _____
EXPLANATION OF EXPENSE _____



CONTRACTOR TO BE PAID BY
— SIGNED — Name of City _____
Contractor _____
Vehicle Owner _____
Authorized Representative _____

DATE AND TIME IN	1	1	6		
DATE AND TIME OUT	1	1	6		
TIME USED					
MILES IN		4	1	2	2
MILES OUT					7
TOTAL MILES				1	3

CHECKED IN BY _____ Initials _____

SENDING RENTAL STATION IMPRINT HERE

RECEIVING RENTAL STATION IMPRINT HERE

JAN 21 PAID
EXHIBIT Life 3
WITNESS [Signature]
DATE 2-28-73

RECEIVED PAYMENT

Contractor's Initials _____

3. Contractor

F-36

835

INVOICE BOOK

DUPLICATE

50 SETS

Redivm

STOCK

71 721

PLAINTIFF'S
EXHIBIT

4-End

70-C-70

836

King Transport Co.
1619 E. John
Seattle, Wash., 98102

Sold To Chris R. O. Pa. System 1/20/66
601 Olive Way
Seattle, Wash. *pd*

INVOICE

Shipped To _____
Address _____

OUR NUMBER
1901
DATE
1/20/66
CUSTOMER'S ORDER
SALESMAN
TERMS
F. O. B.

1/2	Transfer one local	4 0	2 50	10 00
1/4	- - -	2 1 2	2 50	52 50
1/5	- - -	6 0	2 50	15 00
1/14	- - -	2 7 2	2 50	67 50
				145 00
Thank you				

Rediform
7H 721

837

King Transport Co.
1619 E. John
Seattle, Wash. 98102

OUR NUMBER
1902
DATE
1/20/66
CUSTOMER'S ORDER
SALESMAN
TERMS
F. O. B.

INVOICE

Sold To The Harts Corporation
1413 - 7th Ave.
Seattle, Wash.

Shipped To _____
Address _____

1/2	Trans. for car 7th + Tacoma	1 00	2 50	2 50
1/4	Trans. for car's locally	2 00	2 50	7 50
-	- - - - - to 7th	4 00	3 50	14 00
1/2	- - - - - locally	1 00	2 50	2 50
-	- - - - - PDX to Seattle	4 00	10 00	40 00
-	Toll ch. for car at airport PDX car	5 00	20	1 00
1/6	Trans. for car PDX to Seattle	4 00	10 00	40 00
-	Toll ch. for car at airport PDX car	5 00	20	1 00

Rediform
7H 721

838

King Transport Co.
 16191 E. John
 Seattle, Wash., 98102

OUR NUMBER
1903
DATE 1/17/66
CUSTOMER'S ORDER
SALESMAN
TERMS
F. O. B.

Sold To Budget R. H. A. Car System
and Wash
Seattle, Wash., 98121

~~PAID~~

INVOICE

Shipped To _____
 Address _____

1. Transp. Power to Olympia			5.50
- Wash. K.T.C. check			3.18
1.50 trans. for car lease	2.50	2.50	00
Duplicate to Budget given on 2/7/66 on #1917			
11. k you for receipt attached			
			33.68

Rediform
 7H 721

839

OUR NUMBER
1905
DATE
1/25/66
CUSTOMER'S ORDER
SALESMAN
TERMS
F. O. B.

Sold
To

Subj: R. A. O. P.
and will be
with 6 Nov. 1982.

FEB 11 PAID

INVOICE

Shipped To.

Address

[illegible]

Rediform
7H 721

840

King Transport Co.
1617 E. John
Seattle, Wash., 98102

Sold
To

Chris R. F. A. Co. Systems
401 Olive Way
Seattle, Wash.

JAN 28 PAID

Shipped To.

Address.

INVOICE

Rediform
7H 721

OUR NUMBER

1906

DA10

DATE 1/27/66

CUSTOMER'S ORDER

SALESMAN

TERMAS

F. O. D.

[illegible]

841

Keir Transport Co.
1614 E. 9th
Seattle, Wash. 98102

1907

E614

DATE 1/26/65

CUSTOMER'S ORDER

SALESMAN.

not easily in
discuss + other

F, O, L

Sold
To

Edw. R. A. Co. System
at W. H. Co. Ave.
Seattle Wash. 98101

Shipped To

Address

FEB 11 PAID

INVOICE

Rediform
7H 721

25	Transfers locally	712	250	17
Thank you -				

84+2

845

King Transport Co.
1619 E. John
Seattle, Wash. 98102

OUR NUMBER
1912
DATE
7/3/66
CUSTOMER'S ORDER
SALESMAN
TERMS
F. O. B.

○

Sold To

Chris R. A. Co. System
401 Olive Way
Seattle, Wash.

EAB 4-PAID

INVOICE

Shipped To

Address

718	Transp. cars locality	16 @	2 50	40 00
720	- - -	10 @	2 50	25 00
722	- - -	1 @	2 50	2 50
721	- - -	12 @	2 50	27 50
721	- - -	4 @	2 50	10 00
Thank you -				
				105 00

Rediform

7H 721

847

King Transport Co
1619 E. John
Seattle Wash, 48102

OUR NUMBER
1913
DATE 2/3/66
CUSTOMER'S ORDER
SALESMAN
TERMS
F. C. D.

Sold To
The H. L. Corporation
1412 - 7th Ave.
Seattle, Wash

Handwritten: *Handwritten*
Stamp: **FEB 4 1966**

Shipped To

Address

INVOICE

1/27	Trans. Co. K. T. C. to 7th			7 00
-	Sp. for K. T. C. to 7th			2 50
-	Trans. Co. to 7th	5 @	10 00	50 00
-	Sp. for K. T. C. to 7th			2 05
1/28	Trans. Co. to 7th	1 @	3 50	3 50
-	Trans. Co. to 7th	7 @	2 50	17 50
1/29	Trans. Co. to 7th	6 @	10 00	60 00
-	Trans. Co. to 7th	7 @	20	1 40
	Thank you -			145 95

ediform
711 721

848

King Transport Co
1614 E. John
Seattle, Wash. 98102

OUR NUMBER
1914
DATE
2/2/66
CUSTOMER'S ORDER
SALESMAN
TERMS
F. O. B.

Sold To Budget Rental Car System
Seattle, Wash. 98101
MAR 10 PAID

INVOICE

Shipped To _____
Address _____

Transfer cars locally	6 @	250	150
Thank you -			
			150

Radiform
7H 721

648

King Transport Co.
1619 E. John
Seattle, Wash, 98102

OUR NUMBER
1915
DATE 2/10/51
CUSTOMER'S ORDER
SALESMAN
TERMS
P. O. No.

(1) Sold To Amis Rent-A-Car System
121 Olive St.
Seattle, Wash.

FEB 11 PAID

Shipped To _____

Address _____

INVOICE

2/2	Transp. cons. Local	10.00	2.50	25.00
2/3	✓ - -	13.00	2.50	31.50
2/5	✓ - -	6.00	2.50	15.00
2/6	✓ - -	6.00	2.50	15.00
2/7	✓ - -	12.00	2.50	20.00
2/8	- - -	4.00	2.50	10.00
Thank you -				107.50

Modified
7-1721

850

King Transport Co.
 1619 1/2 E. John
 Seattle, Wash. 98102

INVOICE

Sold To Reed P. Rint. (1 - Car System
2001 Westlake Ave.
Seattle, Wash. 98121

Shipped To _____

Address _____

OUR NUMBER
1917
DATE 7/17/46
CUSTOMER'S ORDER
SALVAGE
not cashed - no discount allowed P. O. &

PAID
 FEB 11 1946

1st	Transfers R-102 to Olympia				5	5
-	Transfer P.T.C. to car				31	
75	Transfer car locally	100	250	250		
Duplicate invoice of #1903 dated 1/7/46						
Thank you						
Gas receipt attached to previous invoice						
					336	

721

852

King Transport Co.
1619 E. John
Seattle, Wash., 48102

OUR NUMBER
1918
DATE 2/1/60
CUSTOMER'S ORDER
SALESMAN
get cash - no F. O. B.

Sold To

Budget Rent-A-Car System
2021 Westlake Ave.
Seattle, Wash., 98121

MAR 10 PAID

INVOICE

Shipped To

Address

37 Transfer CR618 sent to Olympia

Thank you

Transfer ticket attached

Rediform

711 721

853

55

King Transport Co
1614 E. 8th
Seattle, Wash., 98102

CUR NUMBER

1919

DATE
2/17/66

CUSTOMER'S CODE

SALESMAN

TERMS

F. O. B.

Sold To

Bus Rent - A - Car System

101 Olive Way

Seattle, Wash.

Shipped To

Address

FEB 17 PAID

INVOICE

2/11	Transfer cars locally	13 @	2.50	32.50
2/12	- - -	2 @	2.50	5.00
2/15	- - -	15 @	2.50	37.50
2/15	- - -	5 @	2.50	12.50
2/16	- - -	2 @	2.50	5.00
Thank you -				
				97.50

854

Ediform
7H 721

King Transport Co.
1619 E. John
Seattle, Wash., 98102

Sold To

11-1 Port-A-Pan System
11-1 Blue Way
11-1 1st St. W. B. H.

FEB 24 PAID

Shipped To

Address

11-1	Trans. m. locally	40	250	1000
11-1	- - -	220	250	5500
11-1	- - -	50	250	1250
11-1	- - -	160	250	4000
11-1	- - -	140	250	3500
11-1	- - -	60	250	1500
Thank you -				16750

OUR NUMBER

1923

DATE

2/24/66

CUSTOMER'S ORDER

SALESMAN

TERMS

F. O. B.

858

King Transport Co.
1101 6th Ave
Seattle, Wash., 98102

OUR NUMBER
1925
DATE
2/28/66
CUSTOMER'S ORDER
SALESMAN
TERMS
F. O. B.

Sold to

West Chevrolet Inc.
1500 1st Ave. N.E.
Seattle, Wash.

Shipped To

Address

13 @	2.50	32.50
for 2 Vols 46 Y048, FMS 548		1.20
Gas receipts attached		
Thank you —		
		32.70

INVOICE

Form 721

098

King Transport Co.
1619 E. John
Seattle Wash., 98102

OUR NUMBER
1926
DATE 7/2/66
CUSTOMER'S ORDER
SALESMAN
TERMS
F. O. B.

Sold to Red, L. A. Co. Inc. San Fran
2001 Lake Shore Ave.
Seattle, Wash., 98102

Shipped To _____

Address _____

INVOICE

2001 car from Seattle + 2001	2.0	2	50	500
- 2nd. for CH 712 from Portland Oregon to Seattle Wash.				2500
- 1/4 chg. all maintenance for K.T.C. chase car				100
- 1/4 chg. for the 2nd car and K.T.C. chase car.				1761
Gas receipts attached and fuel receipt attached				
Thank you -				
				22761

861

King Transport Co.
1616 E. John
Seattle, Wash., 48102

Sold To

Chas. R. A. Co. System
601 Pike Way
Seattle, Wash.

FEB 4 PAID

Shipped To

Address

OUR NUMBER

1927

DATE

2/2/66

CUSTOMER'S ORDER

SALES/ADJ.

TERMS

F. O. B.

1/2	Transp. on locality	6 @	250	1500
1/2	- - -	3 @	250	750
1/2	- - -	2 @	250	500
1/2	- - -	3 @	250	750
1/2	- - -	3 @	250	750
Thank you -				
				9500

862

King Transport Co.
1614 E. John
Seattle, Wash, 98102

Sold To

Chris Kent - A. C. System

1014 E. John

Seattle, Wash.

Shipped To

Address

OUR NUMBER
1930
DATE
3/10/66
CUSTOMER'S ORDER
SALESMAN
TERMS
F. O. B.

INVOICE

	10.0	1.50	25.00
	13.0	2.50	32.50
	23.0	2.50	57.50
	12.0	1.50	30.00
Thank you -			
			14.50
			145.00

865

King Transport Co
1617 E. John
Seattle, Wash. 98.02

OUR NUMBER
1931
DATE 2/17/66
CUSTOMER'S ORDER
SALESMAN
TERMS
F. O. B.

Sold To Trans Rpt-A-Cm System
John Wiley
Seattle Wash

MAR 18 PAID

Shipped To _____
Address _____

INVOICE

12	Trans Rpt-A-Cm	5.00	2.50	2.50
12	-	1.80	2.50	4.30
14	-	3.50	2.50	8.70

Thank you

866

Form 721

King Transport Co.
1619 8th Ave
Seattle, Wash., 48102

OUR NUMBER

1933

DATE

3/24/66

CUSTOMER'S ORDER

SALESMAN

TERMS

F. O. B.

Sold To

Trans-Rent-A-Car System
1111 1st Ave
Seattle, Wash.

Shipped To

KAR 25 PAID

Address

	Trans-Rent-A-Car	92	250	2250
	-	140	250	3500
	-	90	250	2250
	-	60	250	1500
	Thank you -			
				9500

898

PLAINTIFF'S
EXHIBIT#5-Exd
70-C-70

SECTION 3121.—DEFINITIONS

SECTION 3121.—DEFINITIONS [FEDERAL INSURANCE
CONTRIBUTIONS ACT]

26 CFR 31.3121(d)-1: Who are employees. Rev. Rul. 66-381
(Also Sections 3306, 3401; 31.3306(i)-1,
31.3401(e)-1.)

"Car shuttlers" are engaged by a car rental agency to shuttle cars from one location to another. They are required to deliver the car personally at the time and place specified, and for a designated fee, in the same condition as received. They may not use the car other than for the delivery to the location specified nor transport any person or property therein. They are paid on a job basis. *Held*, the shuttlers are employees of the agency for Federal employment tax purposes.

The Internal Revenue Service has been asked to determine whether individuals employed by a car rental agency to shuttle cars from one location to another under the circumstances described below are employees of the agency for purposes of the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and the Collection of Income Tax at Source on Wages (chs. 21, 23, and 24, respectively, subtitle C, Internal Revenue Code of 1954).

The agency is in the business of renting cars without drivers. The availability of cars at locations where needed is a prime factor in developing and keeping customers. This requires a constant re-distribution of cars to meet reservations and maintain a ready reserve. Normally this is accomplished by regular full-time employees of the agency who also perform other duties, such as washing cars, changing tires, and making minor repairs.

In certain metropolitan areas where during peak rental periods the movement of cars cannot be handled exclusively by the agency's regular employees, the agency engages individuals, who are known in the industry as "car shuttlers," to meet this emergency re-distribution problem.

A separate contract is negotiated for delivery of each car. The contract requires that the shuttler deliver the car personally at the time and place specified, and for a designated fee, in the same condition as received, ordinary wear and tear excepted. The agency pays all expenses incurred in connection with the delivery of the car. The shuttler agrees to use the car only for delivery to the location specified and not to transport any person or property therein. The contract designates the shuttler as an independent contractor.

The shuttler is paid on a job basis. A photocopy of the shuttler's driver's license is made and retained by the agency for the purpose of having evidence he is a licensed driver and for identification purposes in case of an accident. The agency is interested in the safe delivery of the car and if the shuttler has an accident due to negligence or is stopped by the police for drinking or speeding, the agency will not enter into another contract with that shuttler. Most of the shuttlers have regular employment elsewhere and only perform shuttling services in their spare time for short periods of time.

11

The shuttlers are employees for Federal employment tax purposes if they have the status of employees under the usual common law rules applicable in determining the employer-employee relationship. Guides for determining that status are found in three substantially similar sections of the Employment Tax Regulations, namely, sections 31.3121(d)-1(c), 31.3306(i)-1, and 31.3401(c)-1.

Section 31.3121(d)-1(c) of the regulations provides, in part, that generally the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished, that is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer.

The test of control must be viewed in the context of the particular job to be done. In the instant case the agency maintains a degree of control over the shuttlers which is parallel to that maintained over its regular employees who perform the same task. Both the nature and economy of transporting a single car to a specific location preclude the placing of another employee of the agency in the automobile to maintain direct control over the driver. Under the terms of the contract the agency retains the right of control over when the car leaves and arrives and control over what is done with the car en route. The requirement that the shuttler personally perform the service indicates that the agency is concerned with the method of performance, which it can control through its power of selection, as well as the result of that performance. Related to this is the agency's right to discharge the shuttler by simply not giving him any future contracts. See *Ringling Bros.-Barnum & Bailey Com. Shows v. Higgins*, 189 F. 2d 865 (1951).

Payment by an employer of a worker's business expenses is a factor indicating control over the worker. Conversely, a lack of control is indicated by the worker having to take care of incidental expenses. The "car shuttler" incurs no expenses in the delivery of the car; the agency pays all expenses, such as insurance, gas, and oil.

A significant investment in facilities tends to show an independent status. In the case of the "car shuttler" no investment is made. Similarly, a person who is in a position to realize a profit or suffer a loss is generally an independent contractor while an individual who is an employee is not in such a position. The "car shuttler" is paid a flat fee and is not engaged in an independent enterprise requiring the outlay of capital or the assumption of business risks.

The degree of skill required by an individual is a factor to be considered in determining whether the individual is an employee or an independent contractor. See *United States v. Albert Silk, et al.*, 331 U.S. 704 (1947), Ct. D. 1698, C.B. 1947-2, 167, holding unloaders to be employees.

Upon the basis of the stated facts, the agency exercises, or has the right to exercise, such direction and control over the "car shuttlers" in the performance of their services as is necessary to establish the relationship of employer and employee under the usual common law rules. If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. See section 31.3121(d)-1(a)(3) of the regulations. Accordingly, the shuttlers performing services for the agency under the circumstances described above are employees of the agency for Federal employment tax purposes.

SECTION 3306.—DEFINITIONS [FEDERAL UNEMPLOYMENT TAX ACT]

26 CFR 31.3306(i)-1: Who are employees.

Status of "car shuttlers" performing services for a car rental agency. See Rev. Rul. 66-381, page 10.

SECTION 3401.—DEFINITIONS [COLLECTION OF INCOME TAX AT SOURCE ON WAGES]

26 CFR 31.3401(c)-1: Employee.

Status of "car shuttlers" performing services for a car rental agency. See Rev. Rul. 66-381, page 10.

SECTION 4253.—EXEMPTIONS [COMMUNICATIONS]

Rev. Rul. 66-382

Payments of charges for communication services furnished to a nonprofit hospital are exempt from the tax imposed by section 4251 of the Internal Revenue Code of 1954 regardless of the fact that the hospital charges patients for telephone services.

Advice has been requested as to whether the exemption from the communication tax imposed by section 4251 of the Internal Revenue Code of 1954 on payments made by an exempt nonprofit hospital is affected by the circumstances discussed below.

A hospital, exempt from income tax under section 501(a) of the Code as an organization referred to in section 503(b)(5), is furnished telephone service by the local telephone company. This telephone service includes a switchboard and telephone equipment for use by patients of the hospital in their rooms and by the hospital staff. The charge for this service is paid by the hospital to the local telephone company. The hospital charges its patients for the telephone facility in their rooms either on a per-day basis or on a per-call basis.

Section 4253(h) of the Code, effective with respect to telephone company bills rendered on or after April 1, 1966, provides that no tax shall be imposed under section 4251 of the Code on any amount paid by a nonprofit hospital for services furnished to such organization.

In the factual situation described above payment for the communi-

874

AVIS APPLICATION FOR EMPLOYMENT



Print Name _____ LAST FIRST MIDDLE OR MAIDEN _____ Soc. Sec. No. _____ Tel. _____

Address _____ No. STREET CITY STATE _____ Sex ☐ Male ☐ Female

Emergency Contact _____ NAME TEL. No. ☐ Part Time ☐ Full Time ADDRESS RELATIONSHIP

Desired Position _____ Height _____ Weight _____

☐ Single ☐ Married ☐ Widowed ☐ Divorced ☐ Remarried ☐ Separated No. of Dependents _____

Can You Operate a Motor Vehicle? ☐ Car ☐ Truck ☐ No Your Driver's Lic. No. _____ Expiration Date _____

☐ U.S. Citizen ☐ Applied for papers Draft Status _____ Board No. _____

☐ Own Home ☐ Renting ☐ Boarding ☐ Live with Parents Will You Work: Split Shift? _____ Nights? _____

Is spouse employed? _____ Where? _____

Have you worked for Avis before? _____ When? _____ to _____ Where? _____

Reason for leaving _____ Position held _____

EDUCATION:	NAME AND LOCATION	FROM	TO	COURSE OF STUDY	DID YOU GRADUATE
High School					
College					
Other					

Three references (no former employers or relatives):

NAME	ADDRESS	POSITION	TEL. No.
1.			
2.			
3.			

Military Service: _____ to _____ Rank at induction _____

Date from _____ Rank when discharged _____ Type of discharge _____

Special training _____ Branch of service _____

Are you now a member of reserve _____ Active _____ Inactive _____ National Guard _____ (BRANCH) (DIVISION)

If presently employed why do you wish to leave? _____

May we refer to your present employer? _____

Salary desired? _____ How soon can you report for work? _____

(OVER)

BACK SIDE #6

875

Last or present employer		Employer's address		Kind of business	
Your job	Your supervisor's name	His title		Tel. No.	
When did you start?	When did you leave?	Your starting rate: \$	per	Your rate at leaving: \$	per
Why did you leave?					

Next to last employer		Employer's address		Kind of business	
Your job	Your supervisor's name	His title		Tel. No.	
When did you start?	When did you leave?	Your starting rate: \$	per	Your rate at leaving: \$	per
Why did you leave?					

Next previous employer		Employer's address		Kind of business	
Your job	Your supervisor's name	His title		Tel. No.	
When did you start?	When did you leave?	Your starting rate: \$	per	Your rate at leaving: \$	per
Why did you leave?					

Have you ever been found guilty of a crime other than a minor traffic violation? ☐ Yes ☐ No

If yes, explain

(state when, where and the court concerned)

Has fidelity insurance coverage ever been denied with respect to you? ☐ Yes ☐ No

If yes, explain

Last major illnesses or accidents, and dates

Have you any physical disabilities?

- I hereby authorize Avis to investigate these statements or references without liability arising therefrom.
- I understand that any false statements in this application will be sufficient cause for discharge if employed.
- I agree to submit to a physical examination.

Date _____ Applicant's Signature _____

Date _____ Interviewed by _____

THIS SECTION FOR CITY MANAGER'S USE ONLY

Employment effective _____ Salary \$ _____ Per _____

Position _____ Date started _____

General comments: _____

If applicant is hired, attach original copy to payroll records. Duplicate city files.

Printed in U.S.A.

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AVIS

EMPLOYMENT TEST
Part I

APPLICANT'S NAME: _____

DATE: _____

FOR AVIS USE ONLY

TOTAL TIME: _____ Min.

ADDRESS: _____

CITY CODE NO. _____

SCORE: _____

Please answer as many of the following questions as you can.

DO FIGURING IN THIS COLUMN

1. A customer rented a car and agreed to pay a "time" charge of \$10.00 for each 24 hour period plus \$1.50 for each extra hour. He took the car out at 8:30 A.M. on June 7th and returned it at 1:30 P.M. on June 8th. How much should his "time" charge be?

ANSWER

There are 3 customers' bills showing amounts due of \$35.35, \$42.42 and \$44.44. Each customer is entitled to a different discount. The first customer is entitled to a 10% discount, the second a 20% discount, the third a 25% discount.

ANSWER

2. With a 10% discount, the \$35.35 bill will be _____
 3. With a 20% discount, the \$42.42 bill will be _____
 4. With a 25% discount, the \$44.44 bill will be _____

5. There is a 3% sales tax on a bill of \$25.55. Write in the new total.

ANSWER

6. Add the following:

121.63
 63.05
 81.25
 1,001.75
 89.26
 1.75
 \$

ANSWER

7. Subtract the following:

\$1,847.72
 349.21
 \$

ANSWER

8. 123 times 47

ANSWER

9. 1% of \$150.00?

ANSWER

10. Mr. Jones rented a Dodge Dart for \$9.00 a day (1 day = 24 hrs.) \$1.25 an hour and 9¢ a mile.

OUT INFO: Miles out - 1,643

Date out - Jan. 1, 1965 at 1:00 p.m.

IN INFO: The car was returned on Jan. 4, 1965 at 2:00 p.m.

Miles in - 2,241

Mr. Jones is allowed a 20% discount. After you have computed his cost less his discount - add a 3% sales tax and give final answer.

ANSWER



877

Part I

DO FIGURING IN THIS COLUMN	
11. If a merchant buys a barrel of apples for \$5.00 and sells it for \$5.95, how many barrels must he sell to make a profit of \$4.75?	ANSWER
12. If an automobile runs for 270 miles on 18 gallons of gas, how many miles per gallon does the car travel?	ANSWER
13. If an automobile rents for \$11.00 per day plus 11¢ per mile, what is the cost for a 3-day trip covering 365 miles?	ANSWER
14. What is the square root of 81?	ANSWER
15. How many square feet in an area 3 yds. long and 2 yds. wide?	ANSWER
16. If a worker earns \$2.00 per hour for a 40-hour week and receives time-and-a-half for overtime beyond 40 hours, how much will he earn if he works 48 hours in one week?	ANSWER
17. Subtract 36 from 100 and divide the result by 8.	ANSWER
18. If you add 37 minutes to 11:38 p.m., what time is it?	ANSWER
19. Many transportation companies as well as the military use 24-hour time. Opposite each of the times shown by the 24-hour method, write the equivalent time. Indicate AM or PM by crossing out the non-applicable item.	
0800 <input type="checkbox"/> AM <input type="checkbox"/> PM	2215 <input type="checkbox"/> AM <input type="checkbox"/> PM
20. Convert the following into 24-hour military time.	
2:45 PM	9:30 AM

Part I Score: _____

What is the approximate distance in miles between the following cities:

1. Philadelphia, Pennsylvania and Washington, D. C. _____ miles
2. San Francisco, California and Los Angeles, California _____ miles
3. Jacksonville, Florida and Miami, Florida _____ miles
4. What is the street location of the office in which you are now being interviewed? _____

Name the states in which the following cities are located:

5. Phoenix _____
6. Trenton _____
7. Austin _____
8. Tuscaloosa _____
9. Decatur _____
10. New Haven _____

Underline the correct answer, including two where a combination is more accurate, in each of the following cases:

11. Atlanta, Georgia is (north, south, east, west) of Buffalo, New York.
12. Chicago, Illinois is (north, south, east, west) of Cleveland, Ohio.
13. San Francisco, California is (north, south, east, west) of Los Angeles, California.
14. Pittsburg, Pennsylvania is (north, south, east, west) of Denver, Colorado.
15. Miami, Florida is (north, south, east, west) of Omaha, Nebraska.
16. Which automobile manufacturer produces a Falcon? _____
17. Which automobile manufacturer produces a Dart? _____
18. Which automobile manufacturer produces an Imperial? _____
19. What is the name of the present Vice-President of the United States of America? _____
20. On April 27, a customer rented a car for one week. On what date is the car due back? _____

In each of the following statements, circle the "T" if the statement is true. If the statement is false, circle the "F".

21. An abridged dictionary gives more detailed definitions than an unabridged dictionary. T F
22. If a person wishes to make sure that a long-distance telephone call to a particular person is completed satisfactorily, he should ask for station-to station service. T F
23. The rate for a long-distance call is usually based on an initial period of five minutes. T F
24. Alter means to change. T F
25. Dun & Bradstreet is a source of information on credit ratings. T F

Underline the incorrectly spelled words:

26. contract
27. supersede
28. safetely
29. identification
30. licensee
31. similiar
32. posses
33. familar
34. convenience
35. defenite

Underline the best definition:

36. AFFIDAVIT (hoist) (friendly) (legal affirmation) (good faith)
37. BOYCOTT (combine against) (boys' organization) (juvenile delinquent) (man)
38. CANVASS (sailcloth) (a duck) (solicit) (deep crack in a mountain)
39. PERSONNEL (belonging to one person) (a group of employees) (attractive) (song)
40. STATIONERY (letter paper) (immovable) (unchanged condition) (likeness of a person)

Choose the item which best answers the question. Put its letter in the space provided at the right.

		ANSWERS
41. Messages sent from one continent to another are known as	(A) full-rate telegrams (B) night letters (C) day letters (D) cablegrams	
42. Money paid on an insurance policy is called a	(A) premium (B) stipend (C) retainer (D) sight draft	
43. The abbreviation <u>cwt.</u> stands for	(A) check will follow (B) check with tracer (C) hundredweight (D) remittance	
44. The grammatically incorrect sentence is	(A) Jane called Mary and I on the telephone. (B) We heard that the hat was attractive on her. (C) This is the He that I wore with my brown suit. (D) We did not think of her being here.	
45. The grammatically correct sentence is	(A) I will be glad to come. (B) The date is prepared. (C) Each of the boys is going. (D) It shall snow in April.	
46. Which is the unrelated word in the following list?	(A) horse (B) cow (C) mice (D) rabbit (E) cat	
47. Which is the unrelated word in the following list?	(A) streets (B) avenues (C) roads (D) towns (E) boulevards	
48. Which is the unrelated word in the following list?	(A) Africa (B) Canada (C) South America (D) Asia (E) Australia	
49. Which is the unrelated word in the following list?	(A) truck (B) motorcycle (C) steamship (D) automobile (E) train	
50. Which is the unrelated word in the following list?	(A) stenographer (B) bookkeeper (C) mechanic (D) typist (E) messenger	

Part II Score: _____

INTERVIEWER'S COMMENTS:

VEHICLE TRANSFER CONTRACT

Contractor acknowledges that he received the vehicle below from Owner or Owner's Authorized Representative in good appearance and safe mechanical condition, and agrees to deliver it at the time and place and for the fee designated below, in the same condition as received, ordinary wear and tear excepted. Contractor agrees not to use said vehicle for any purpose other than for delivery as described herein, nor to transport any persons or property therein. It is agreed that this contract in no way constitutes the contractor as an agent or employee of the owner of said vehicle or of Avis Rent-a-Car System, its members or licensor or licensor's subsidiaries.

CONTRACT SPECIFICATIONS

To Deliver Vehicle #

Color

Make

Model

Additional Equipment

License

STATE

NUMBER

From

ARRIVAL TIME AND DATE

TRANSFER FEE \$

ALLOWED EXPENSE \$

EXPLANATION OF EXPENSE

CONTRACTOR TO BE PAID BY

SIGNED

Name of City

Contractor

Vehicle Owner

Authorized Representative

SENDING RENTAL STATION IMPRINT HERE

0-01-D. AVIS LICENSED
NATIONAL AIRPORT
MIAMI BEACH, FLA
TEL 253-6113

RECEIVED PAYMENT

Contractor's Initials

CHECKED IN BY

Initials

RECEIVING RENTAL STATION IMPRINT HERE

4. Receiving City OPR 23



DATE AND TIME IN	
DATE AND TIME OUT	
TIME USED	
MILES IN	
MILES OUT	
TOTAL MILES	

880

AGREEMENT by and between ADVISORIENT A CAR SYSTEM, Inc., (RENT-A-CAR DIVISION) party of the first part,

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hereafter referred to as the Employer, and the GARAGE & SERVICE STATION EMPLOYEES' UNION, LOCAL NO. 655, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, party of the second part, hereafter referred to as the Union, covering the employment of persons coming under the jurisdiction of the Union.

SECTION I. RIGHT OF EMPLOYMENT. Only workers of good standing in the Union shall be employed in employment for the purposes of this Section. "Workers in good standing" shall be defined as such employee members of the Union who pay the initiation dues and initiation fees uniformly required as a condition of admission or retaining membership.

All employees covered by this Agreement shall become members of the Union within thirty (30) days after the effective date of this Agreement or within thirty (30) days after the date of employment, whichever is later, and shall retain a status of the Union in good standing as a condition of continued employment.

SECTION II. WORK WEEK: The work week shall consist of five (5) consecutive days of eight (8) hours each. These periods shall not exceed one (1) hour.

SECTION III. Hourly Rates of Pay and Overtime

(a) <u>CLASSIFICATION</u>	12/1/63	12/1/64	12/1/65
Auto Econ. Maintenance Men	\$ 3.00	\$ 3.075	\$ 3.15
Tire Service Men	3.125	3.20	3.275

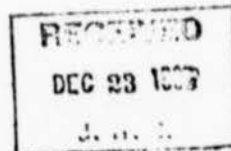
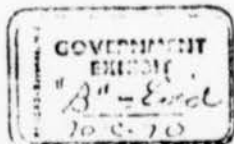
OVERTIME Overtime shall be paid for on the basis of time and one-half the applicable regular hourly rate including shift premium for all hours worked in excess of eight (8) hours in any one day or forty (40) hours in any one week.

(b) The regularly scheduled day shift shall start not earlier than 7:00 a.m. and end not later than 6:00 p.m.

No night shift premium shall be paid for work performed between these hours on a regularly scheduled day shift.

Employees shall be paid then (10%) percent additional for all work performed between 4:00 p.m. and midnight; and fifteen (15%) percent additional for all work performed between midnight and 8:00 a.m. except for work performed on a regularly scheduled day shift or for overtime worked as a continuation of a regularly established shift.

[-1-]



(c) Temporary Employment:

Temporary employees shall be defined as men employed for less than (1) week's work and shall receive not less than one (1) day's pay when employed. Any employee who is employed for less than one (1) week's work shall be paid ten (10%) per cent above his daily rate of pay. Any steady employee who voluntarily leaves his place of employment shall not be paid ten (10%) percent above his daily rate of pay.

In the event an employee reports for work and has not received notification from his employer (not later than the preceding work day) not to report for work he shall receive one (1) day's pay. This section shall not apply to employees engaged in car shifting at airports or between airports and/or stations. Such employees shall receive not less than four (4) hours' pay, but without the payment of the ten (10%) percent referred to in the paragraph above.

- (d) Wages, hours and/or other conditions now in effect which are more beneficial to the employees than those stipulated in this contract shall not be reduced or discontinued.
- (e) LEADERMAN: Service leaderman, when designated by the employer, shall receive 10% over the highest rate paid to subordinate employees.
- (f) COMPENSATORY INJURIES: In case of compensatory injuries under the Workmen's Compensation Act where the employee is able to continue on the job but is required to visit a doctor for treatment upon his orders, such employee shall be allowed a maximum of two (2) hours for each doctor's visit without a deduction in pay.

SECTION IV. PAID HOLIDAYS: The following holidays shall be paid at the employee's regular rate, including any shift premium, when not worked irrespective of the day on which they fall:

New Year's Day	Fourth of July	Christmas Day
Washington's Birthday	Labor Day	Veteran's Day
Memorial Day	Thanksgiving Day	Employees Birthday

- (b) Any employee working on the above mentioned holidays shall be paid an additional day's pay of not less than eight (8) hours at his regular rate of pay, including shift premium. If an employee works on a holiday he shall be paid straight time for all such hours worked in addition to the holiday pay. Any full time employee who works any part of the day shall receive a full day's pay.
- (c) When any of the above holidays fall on Sunday, the day observed by the State or the Nation shall be considered as the holiday, including shift premium. In the event a holiday falls during the employee's vacation, the employee shall receive an additional day off with pay, or an additional day's pay.
- (d) In order to be eligible for holiday pay when no work is performed an employee must be available for work on the last regular work day immediately prior to a holiday and the first regular work day

immediately following the holiday unless the employee can show a justifiable excuse to his employer and the Union. Any employee who is laid off or discharged for cause, at the end of his work week, shall receive pay for any holiday that falls on the first day of the employee's shift the following week.

SECTION V. VACATION: Any employee with one year of continuous service with any one employer, shall on the yearly anniversary date of his hire, receive with pay five (5) days vacation for one (1) year of service, then (10) days for two (2) years of service, fifteen (15) days for five (5) years of service and twenty (20) days for twelve (12) years of service. Vacation pay shall be calculated on the basis of an employee's regular hourly wage, including any shift premium.

(b) Vacation assignments shall be made at the employer's discretion, whenever practicable according to seniority. The employer shall not fix any vacation periods during the months of October, November, December, January, February and March, unless the employee entitled to such vacation period prefers his vacation within those months. At least two (2) weeks' advance notice of vacations shall be given such employees.

(c) All employees covered by this agreement, who have been in the employ of their respective employers three months or more, whose services terminate for any reason, shall receive prorated vacation pay on the following basis: employees who have completed more than three months and less than one year of employment, one-twelfth (1/12) of one week's wage, exclusive of overtime, for each completed calendar month of employment; employees who have completed one year and less than five years of employment, one-twelfth (1/12) of two weeks' wage, exclusive of overtime, for each completed calendar month of employment; and employees who have completed more than five (5) years of employment, one-twelfth (1/12) of three weeks' wage, exclusive of overtime, for each completed calendar month of employment; and employees who have completed twelve (12) years of employment, one-twelfth (1/12) of four weeks wage, exclusive of overtime, for each completed calendar month of employment. All prorated vacation pay shall include shift differentials.

SECTION VI. SICK AND LEAVES: All full time regular employees who have been in the employ of the company one (1) full year or more, shall receive six (6) days of sick leave with pay for each year commencing with the second day of illness, except if hospitalized, in which case it shall commence on the first day. Unused sick leave shall be granted at the end of the calendar year in cash in an amount not to exceed five (5) days or by mutual agreement between the Employer and the employee as paid time off to be taken at a time mutually agreed upon. In the event that an employee quits or is terminated, he shall qualify for such unused sick leave payment in cash on a prorated basis. Prorated sick leave pay shall be computed on the basis of each completed calendar month of service or major fraction thereof. The above clause may be utilized in the event of death of a member of the employee's immediate family not to exceed three (3) days. Immediate family shall be the employee's Father, Mother, Children, Spouse, and Brother or Sister.

SECTION VII. WORKING CONDITIONS: It is the duty of the Employer to furnish all tools, appliances or tools necessary for the work to be performed. He shall also furnish and provide any special type, color or design of wearing apparel where such articles are required.

SECTION VIII. UNION RECOGNITION: It is agreed that the signing of this agreement shall constitute a recognition of the Union and it is further agreed that no members shall be discharged for activity in or representing the Union.

SECTION IX. SICKNESS BENEFITS: Pursuant to the terms of this agreement the employer shall provide to the employees a Health and Welfare Plan as per booklet attached hereto which will be paid by the administrator of the Bay Area Teachers' Association. The plan the premiums and administrative cost as provided for in the Bay Area Teachers' Trust agreement and the amendments thereto.

All employees who have completed at least 100 hours of work in the previous month shall be eligible for coverage under such plan on the first of the month following completion of such eighty (80) hours of work.

Premium must be paid by the tenth (10th) day of the current month. Any employer who fails to provide his employees with insurance benefits described above and who fails to pay the required premiums by the tenth (10th) day of the current month shall be held personally responsible to the employees herein covered for the benefits which would have been provided by such insurance coverage. It shall not be a violation of this contract for the Union to take necessary economic action upon failure of the employer to pay premiums as above provided.

In addition to the basic plan described above, the employer agrees to increase contributions by \$5.00 per month for the purchase of broader benefits for eligible employees.

SECTION X. PENSION PLAN: The Employer agrees to pay into the Western Conference of Teachers' Pension Trust Fund on account of each member in the bargaining unit an amount equal to fifteen (15¢) cents for each hour for which compensation is paid to him, said amounts to be computed monthly. The total amount due for each calendar month shall be remitted in a lump sum not later than ten (10) days after the last business day of such month. The employer agrees to abide by such rules as may be established by the Trustees of said Trust fund to facilitate the determination of the hours for which contributions are due, the prompt and orderly collection of such amounts, and the accurate reporting and recording of such hours and such amounts paid on account of each member of the bargaining unit.

SECTION XI. RESPONSIBILITY: Employees shall not be responsible for damaged, lost or stolen property except in a case of proven negligence or failure to follow the Employer's instruction.

SECTION XII. EMPLOYMENT AGENCY FEES: If employees are hired through an employment agency, the Employer is to pay the employment agency fee.

SECTION XIII. It shall not be a violation of this agreement, and it shall not be cause for discharge or disciplinary action in the event an employee refuses to enter upon any property involved in a lawful primary labor dispute, or refuses to go through or work behind any lawful primary picket

line including lawful primary picket lines at the Employers place of business.

SECTION XIV. ADJUSTMENT: Any misunderstandings or dispute as to the terms of this agreement shall be referred to the Business Agent of the Union and the Employer for adjustment. Should they fail to adjust the grievance, it shall be submitted to the Executive Committee of the Union and the Employer with the power of said two (2) groups to adjust the same or establish by agreement a mutual settlement of the matters in dispute.

In the event of any dispute or grievance between the Union and the Employer that cannot be adjusted under the terms of the preceding section, the said dispute shall be settled by arbitration, each of the parties to nominate and select an equal number of representatives, not less than two (2) for each side, and such representatives by a majority vote to select the fifth (5th) or odd member to be known as the Chairman of the Board of Arbitration. The decision of the Board of Arbitration shall be made in writing, and signed by the majority of the Board voting in favor thereof, and shall be binding upon both parties.

SECTION XV. TERM OF AGREEMENT: This agreement shall become effective December 1, 1963, and remain in force until November 1, 1966, and shall be considered as renewed from year to year thereafter, unless either party hereto shall give written notice to the other of their desire to amend same, and such notice must be given at least sixty (60) days prior to any expiration date hereof during which time changes, if any, shall be negotiated.

AVIS RENT A CAR SYSTEM, INC.
(Rent A Car Division)

CARAGE & SERVICE STATION EMPLOYEES
LOCAL UNION NO. 665

/s/ Leon Kowal
Attorney in Fact

/s/ Arnold Moss

/s/ J. Brennfleck

Date: December 18, 1963

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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AVIS RENT A CAR SYSTEM, INC.,

70-C-70

Plaintiff,

: FINDINGS OF FACT
: CONCLUSIONS OF LAW
: OPINION

-against-

UNITED STATES OF AMERICA,

: September 27, 1973

Defendant.

----- x
APPEARANCES:

GILBERT, SECALL & YOUNG, ESQs.
405 Park Avenue
New York, New York 10022
Attorneys for Plaintiff

ROBERT J. LAYTON, ESQ.
Of Counsel

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Eastern District of New York

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Assistant Attorney General

EDWARD J. SHYDER, ESQ.
ROBERT J. HIPPLE, ESQ.
Attorneys
Department of Justice
Tax Division
Washington, D. C. 20530
Attorneys for Defendant

ROBERT J. HIPPLE, ESQ.
Of Counsel

TRAVIA, D. J.

This action having come on to be heard before this court on the 27th day of July, 1973, and the parties having on that day stipulated to waive a jury trial, and the evidence of the parties having been adduced, and the attorneys for the parties having submitted their respective pretrial and post-trial briefs and memoranda, and upon all the papers and exhibits on file in this action, and after due deliberation this court sets forth its findings of fact, conclusions of law and opinion.

DISCUSSION

Plaintiff corporation, organized under the laws of the State of Delaware with its principal place of business at Garden City, New York, which is within the Eastern District of New York, has filed suit against defendant, UNITED STATES OF AMERICA, in order to recover a sum it has paid as a portion of an assessment allegedly due and owing the Government.

Plaintiff alleges that it has timely filed with the District Director of Internal Revenue at Brooklyn, New York, its Federal Insurance Contributions Act ("FICA"), Federal Unemployment Tax Act ("FUTA"), and Federal Withholding (Collection of Income Tax at Source on Wages) ("Withholding") returns for the years 1962, 1963, 1964, 1965, and 1966, and that it

has paid the amounts shown thereon to be due. After an audit, however, on January 17, 1968 and February 23, 1968, the Commissioner of Internal Revenue assessed deficiencies against plaintiff for the years 1962, 1963, 1964, 1965, and 1966, in the total amounts of \$105,733.20 for FICA, \$6,124.51 for FUTA and \$199,926.46 for Withholding. The basis of these assessments is a claim by the Commissioner that certain individuals engaged from time to time by plaintiff as "car shuttlers" were employees within the meaning of the Internal Revenue laws, so that the FICA, FUTA, and Withholding provisions were applicable to the amounts paid to them by plaintiff. That claim is the issue in this case.

On March 26, 1968 plaintiff paid a sum of \$31,178.42 with respect to the assessments, and that amount constitutes a divisible portion of the additional taxes assessed. On April 30, 1968 plaintiff filed a timely claim for a refund of the additional taxes assessed, and for an abatement of the balance of the assessment.

On April 7, 1968, however, plaintiff received notice that the I.R.S. disallowed in full plaintiff's claim for a refund and an abatement of the additional assessment. These taxes, plaintiff now avers, were erroneously and illegally

"car shuttlers" engaged by plaintiff.

were not "employees" within the meaning of the applicable Internal Revenue Code provisions. As a result, plaintiff seeks the sum of \$31,178.42, which is that amount paid by plaintiff to the Government as a portion of the additional taxes assessed, together with appropriate interest from March 26, 1968.

The Government in its amended answer and counter-claim filed February 16, 1973, denies that the sum paid by the plaintiff is an outgrowth of an illegal assessment, and alleges that the sum of \$323,938.50, which represents the unpaid remainder of the assessment plus interest, is now due and owing the Government.
/1

Only one witness, Mr. Edwin Hale, who is presently a City Manager with Avis Rent A Car System, Inc. ("Avis"), was called to the stand during the course of the trial. The remainder of the evidence before the court, in addition to Mr. Hale's testimony, consists of exhibits and depositions offered, "for any purpose," pursuant to Rule 32 (a)(3)(B), Fed.R.Civ.P.

The issue in this case, a narrow one, turns on whether certain individuals styled "car shuttlers" were in

/1 Jurisdiction lies in this court pursuant to Title 28 U.S.C. § 1346 (a)(1).

fact employees of AVIS or independent contractors, during the years in question, for purposes of FICA, FUTA, and Withholding.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND OPINION

The Federal Insurance Contribution Act, Title 26 U.S.C. § 3101 et seq., imposes both an income tax on individuals with respect to their employment^{/2} and an excise tax on employers "with respect to having individuals in [their] employ."^{/3} Under FICA, an "employee" is defined as, among other things, "any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee...."^{/4}

As an amplification of this definition, 26 C.F.R. § 31.3121(d)-1 provides in pertinent part:

"(c) Common law employees. (1) Every individual is an employee if under the usual common law rules the relationship between him and the person for whom he performs services is the legal relationship of employer and employee.

^{/2} Title 26 U.S.C. § 3101.

^{/3} Title 26 U.S.C. § 3111.

^{/4} Title 26 U.S.C. § 3121(d)-2.

(2) Generally such relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee under the usual common law rules....

(3) Whether the relationship of employer and employee exists under the usual common law rules will in doubtful cases be determined upon an examination of the particular facts of each case. (Emphasis added).

The Federal Unemployment Tax Act, Title 26 U.S.C.

§ 3301 et seq., imposes an excise tax on employers with respect to individuals in their employ.^{/5} Under this chapter, an

^{/5} Title 26 U.S.C. § 3301.

"employee" was defined, for the years in question,^{/6} as including:

"... an officer of a corporation, but such term does not include--

(1) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an independent contractor, or

(2) any individual (except an officer of a corporation) who is not an employee under such common law rules."

The Collection of Income Tax at Source on Wages

("Withholding") provisions, Title 26 U.S.C. § 3401 et seq., mandate that every employer who makes payment of wages "shall deduct and withhold upon such wages . . . a tax."^{/7} The co-extensive definitions of "employee" and "employer" may be found^{/8} in this rather inconclusive section:

^{/6} The pertinent provision, Title 26 U.S.C. § 3306 (1), was amended by Pub. L. 91-373, Title I, § 102 (a), August 10, 1970. The present definition coincides with that definition of "employee" under FICA as found in Title 26 U.S.C. § 3121(d). See also the applicable regulation for FUTA, Title 26 C.F.R. § 31.3306(1)-1.

^{/7} Title 26 U.S.C. § 3402.

^{/8} Title 26 U.S.C. § 3401(d).

"Employer.-For purposes of this chapter, the term 'employer' means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person..."

The pertinent section ^{/9} in the Code of Federal Regulations which elaborates upon the meaning attributed to the term "employee," for purposes of Withholding, however, is a substantial replica of the regulation pertaining to FICA and FUTA "employees." ^{/10} As a result, the test which this court shall utilize in determining whether "car shuttlers" are "employees," or "independent contractors," is the "common law applicable in tort actions under the doctrine of respondent superior." See Lifetime Siding, Inc. v. United States, 359 F.2d 657, 660 (2d Cir.) cert.denied 385 U.S. 921 (1966); Titanium Ores Corp. v. United States, 205 F.Supp. 606, 609 (D.Md. 1962).

An analysis of the particular fact-pattern in a case is always a substantial part of the foundation upon which the court rests its decision, but an examination of the facts by the court is of particular importance in a "doubtful case" ^{/11}

^{/9} Title 26 C.F.R. § 31.3401(c)-1(b).

^{/10} See Title 26 C.F.R. § 31.3121(d)-1, and Title 26 C.F.R. § 31.3306(i)-1(b).

^{/11} See Title 26 C.F.R. § 31.3121(d)-1(c)(3), which states:
"Whether the relationship of employer and employee exists under the usual common law rules will

such as this one. Whether an employer-employee relationship exists or not "is to be ascertained by an over-all view of the entire situation, not by any rule of thumb, or by the presence or absence of a single factor. The result in each case must be governed by the special facts and circumstances of the case itself." Cape Shore Fish Co. v. United States, 330 F.2d 961, 965 (U.S.Ct.Cl. 1964).

What is, therefore, an AVIS "car shuttler"? While many people have come to recognize the "We Try Harder" company, few have begun to realize the magnitude of the day-to-day operations of the corporation. "Car shuttlers" are individuals who have been engaged to ameliorate a "problem" that may arise in "emergency situations."

As everyone knows, AVIS is in the business of renting cars without drivers. The availability of cars at locations where needed is a key facet of plaintiff's operation, and it entails a constant re-distribution of cars to meet reservations and maintain a ready reserve of available cars. This function may be delegated to full-time employees of the local AVIS agencies, but peak rental demands upon the company may cause an imbalance of cars in a certain locale. Such imbalances may result from such diverse factors as holiday traffic, con-

Trial ("TR") 45). In order to re-distribute the many vehicle it handles, plaintiff engages individuals who are appropriately designated "car shuttlers."

A "car shuttler" is paid a fixed fee to move a car from point A to point B (TR 44, 58), and he is required to sign a Vehicle Transfer Contract ^{/12} (Plf's Exh.#3; Def's Exh. "A") before he may move the car. Upon the completion of his task, the "shuttler" is paid his fee by either cash or check (Depositions ("Dops.") of Pape, p. 11; Hillestad, p. 14-15; Elliot, p. 13).

In a suit to recover FICA, FUTA and Withholding taxes, the burden is on the taxpayer to establish that the relationship of employer-employee did not exist during those years in question. ^{/13} It is therefore incumbent upon plaintiff

^{/12} The Vehicle Transfer Contract reads as follows:

"Contractor acknowledges that he received the vehicle below from Owner or Owner's Authorized Representative in good appearance and safe mechanical condition, and agrees to deliver it at the time and place and for the fee designated below, in the same condition as received, ordinary wear and tear excepted. Contractor agrees not to use said vehicle for any purpose other than for delivery as described herein, nor to transport any persons or property therein.

It is agreed that this contract in no way constitutes the contractor as an agent or employee of the owner of said vehicle or of Avis Rent-A-Car System, its members or licensors or licensor's subsidiaries."

^{/13} Kurio v. United States, 281 F.Supp. 252,261 (S.D.Texas 1968)

to prove that the factors attendant to the function of the "car shuttlers" confirm that the "shuttlers" were indeed independent contractors, and not employees of AVIS.

Perhaps the most important, and also the most troublesome, concept which will often clarify a close question regarding the employee-independent contractor dichotomy is whether the principal has the right to direct the manner and method in which the work shall be done, as well as the result to be accomplished.^{/14} Actual supervision over the services performed

is not necessary; it is sufficient if the employer has the right to do so.^{/15} Generally, the satisfaction of these tests indicates an employer-employee relationship.

In the case at bar, plaintiff alleges that during the period in question it did not have the right to exercise control over the manner in which, or the means by which, "shuttlers" did their work. While there is evidence, among other things, that "shuttlers" received no training (Dep. of Copelin, p. 18), were not required to follow a specific route (Dep. of Beck, p. 10), and were not obligated to arrive at a

^{/14} See Illinois Tri-Seal Products, Inc. v. United States, 353 F.2d 216, 223 (U.S.Ct.Cl. 1965); see also Title 26 C.F.R. § 31.3121(d)-1(c)(2).

^{/15} See, e.g., Title 26 C.F.R. § 31.3121(d)-1(c)(2).

specific time at their destination (Dep. of Lankford, p.12), these factors are not conclusive of the issue. The Government contends, and with some validity, that there can be very little control when a person is required to move a car from point A to point B. Further clouding the issue is the fact that it would have been well-nigh impossible for AVIS to put a supervisor in a car with the "shuttler," for it was precisely this manpower shortage which led AVIS to engage "shuttlers."

The key issue, however, is whether the person, or corporation, for whom services are performed has the right to control the actions of the individual. A perusal of the Vehicle Transfer Contract reveals that the "shuttler" was obligated to deliver the vehicle at the time and the place designated in the contract; that the "shuttler" had to agree not to use the vehicle for any purpose other than delivery, and not to transport any persons or property therein. ^{/16} These factors appear to represent a limited right of AVIS to control the performance of the "shuttlers" and, standing alone, plaintiff's contention falls short of convincing this court that "shuttlers" are independent contractors.

/11 Vehicle Transfer Contract, supra note 12.

Plaintiff's other arguments are more substantial.

"Car shuttlers" performed their tasks on a job-to-job basis, and they could reject assignments they deemed unsuitable without fear of recrimination (Deps. of Talarico, p. 21; Reese, p. 18). The "permanency of (a) relationship can hardly be said to exist or be a weighty element where each obligation was of comparatively short duration and the worker was free to accept or reject the offer of a new or similar obligation." /17

Additionally, "shuttlers" were not entitled to, and did not receive vacation pay, overtime pay, sick-leave pay, bonuses or any other fringe benefits (Deps. of Zatezalo, p. 13; O'Brien, p. 13), which may be reasonable indications of an independent contractor status. /18 On the other hand, one may argue that this facet of plaintiff's operation reveals nothing more than the predilections of an overbearing employer. This argument is unpersuasive, however, for "regular employees" of AVIS received, and do receive, such benefits (TR. 49).

In many instances, AVIS dealt with "head shuttlers"

/17 Silver v. United States, 131 F.Supp. 209, 212 (N.D.N.Y. 1954).

/18 See, e.g., Lifetime Siding, Inc. v. United States, 359 F.2d 657, 659 (2d Cir.), cert. denied, 385 U.S. 921 (1966).

who made it their business to select individual "shuttlers." On many of these occasions, AVIS had no contact with the individual "shuttlers" (Deps. of Shrag, pp.3-4; Askey, p.4; Gosling, p.6; TR 56-57). This is of importance, for any right of control AVIS had with regard to the individual "shuttlers" would of necessity be reduced by some degree. See Bonney Motor Express, Inc. v. United States, 206 F.Supp. 22, 24 (E.D.Va. 1962).

Plaintiff makes much of the fact that "shuttlers" were not identified, by their manner of dress, as AVIS personnel (Deps. of Zepp, p. 20; Reese, p. 15). Mr. Halo testified that "shuttlers" had no dress requirements imposed upon them at all, while the regular employees were subject to various restrictions regarding their manner of dress (rental and service agents wore uniforms, and company policy mandated the wearing of the ubiquitous "We Try Harder" buttons (TR. 49, 51). Sound business techniques dictate that those who deal with the public, such as front office managers and high visibility personnel, should be neat in their appearance. It is also to be noted that this is an additional means of advertising. "Shuttlers," on the other hand, are required only to drive a car between two points, and they do not provide any

great amount of importance should be attached to the dress and
 manner of appearance of the "shuttlers."^{/19}

Perhaps a more telling indication of the status of "car shuttlers" is the lack of a seniority system among these individuals since work assignments were handed out on a "first-come, first-serve basis." (Dep. of Gartner, p. 18; Spradley, c., p. 20; Reese, p. 14). A seniority system is often an effective means by which an employer insures that the better-trained individual stays in his employ, and is a functional means for delegating authority among employees.

Moreover, AVIS did not follow an established pattern of interviewing or screening prospective "shuttlers" (Dep. of Moore, p. 6; Elliot, p. 12). This lack of a procedure to sift out potentially "poor" "car shuttlers" may be compared with the screening process AVIS utilizes when it hires new "regular employees." An Application for Employment^{/20} must be filled out in detail by the prospective employee, and a written Employment Test^{/21} must be passed by all such applicants.

^{/19} Cf. William C. McCombs Co. v. United States, 436 F.2d 979, 982 (U.S. Ct.Cl. 1971).

^{/20} Plf's Exh. #6.

^{/21} Plf's Exh. #7.

"Shuttlers," however, ordinarily had to present nothing more than a driver's license in order to move a car (Depa. of Elliot, p. 11; Robertson, p. 10; Moore, p. 6). While it may be suggested that the only skill required of a "car shuttler" is an ability to drive a car, AVIS could have inquired into a "shuttler's" background in order to verify his trustworthiness. ^{/22} This is significant, for it would appear that an employer would naturally be more interested in an employee's, rather than an independent contractor's, prior employment and conduct since the employee is a representative member of that firm, both during and after working hours.

Plaintiff seeks to connect the fact that "shuttlers" had to pay fines for speeding and parking violations (Depa. of Talarico, p. 12; Copelin, p. 13) with their alleged status as independent contractors. Such an inference cannot be drawn when "regular employees" of AVIS had to pay the same fines (TR. 71).

/22 See, for example, Plf's Exh.#6, entitled "Application For Employment," which reads in part:

"Have you ever been found guilty of a crime other than a minor traffic violation?
Has fidelity insurance coverage ever been denied with respect to you?"

This court does note, however, that no workman's compensation insurance of any kind was carried on the "shuttlers" (Deps. of Talarico, p. 6; Chambliss, p. 10), and this is evidence, in the very least, that these men were not looked upon as employees by Avis. Cf. Air Terminal Cab, Inc. v. United States, 341 F.Supp. 1257, 1263 (E.D.Mo. 1972). Moreover, it seems clear that all of plaintiff's actions were pointed so as to indicate its own viewpoint that the "shuttlers" were independent contractors. In a similar vein, there is evidence that the "shuttlers" thought of themselves as independent contractors (Deps. of Shrag, p. 11; Copelin, p. 16), and the Vehicle Transfer Contract specifically reads:

"It is agreed that this contract in no way constitutes the contractor as an agent or employee of the owner of said vehicle or of Avis Rent-A-Car System, its members or licensor or licensor's subsidiaries."

Notwithstanding the sound principles that "contracts, however 'skillfully devised,' should not be permitted to shift tax liability,"^{/23} and that "[p]utting an independent contractor's label on [workers] does not [automatically] take [them] out of the ambit of the federal taxing statutes,"^{/24}

^{/23} United States v. Silk, 331 U.S. 704, 715 (1947).

^{/24} Whorton v. United States, 273 F.Supp. 568, 571 (E.D.Tenn. 1967), aff'd, 394 F.2d 6 (6th Cir.1968). See also Title 26 C.F.R. § 31.3121(d)-1(a)(3).

it is also true that the beliefs and intentions of the parties, while not determinative of the issue, are nonetheless relevant. ^{/25}

It is obvious that the nature of a "shuttler's" job precludes him from being fired during the course of his work, and the only recourse available to a "dissatisfied" AVIS is to refrain from offering that "shuttler" additional contractual assignments. This situation appears to differ from the one in Rayhill v. United States, 364 F.2d 347, 354 (U.S.Ct.Cl. 1966), where, despite the nature of an "applicator's" work, which seems to have allowed for his being fired while on the job, "[i]n no instance was the work of an applicator terminated during its progress." ^{/26}

This court recognizes that the right to discharge need not be exercised, and its mere presence is

^{/25} American Consulting Corp. v. United States, 454 G.2d 473 480 (3d Cir. 1971).

^{/26} See Rayhill v. United States, 364 F.2d 347, 354 (U.S.Ct. Cl. 1966, wherein the court said:

"If plaintiff was dissatisfied with the work, he would not offer the applicator another work order. The applicator, if dissatisfied, would decline the next job offered by the plaintiff. 'This [of course], is not the equivalent of evidence of a right to fire an applicator from a job once he had begun to work on it. It is only evidence of the right not to enter into another contract.'"

sufficient to be an indicator of control,^{/27} but under the circumstances of this case, no meaningful inference should be drawn with regard to the questionable ability, or inability, of AVIS to fire or discharge "shuttlers."^{/28} Suffice it to say that AVIS did not discharge "shuttlers" while they were on the job.

What is of great significance, though, is the fact that these "car shuttlers" had the right to work for other rental agencies, including the competitors of AVIS, and indeed did so (Depts. of Gartner, p. 7; Goeling, p.4; Christensen, p.10). See Illinois Tri-Seal Products, Inc. v. United States, 353 F. 2d 216, 229 (U.S.Ct.Cl. 1965). Such actions on the part of the "shuttlers" indicate an independence from plaintiff that greatly transcends any degree of freedom ordinarily exhibited by an employee.

It seems clear that the factors here in their totality establish that these individuals styled "car shuttlers," were,

^{/27} See E.F. Williams Co. v. United States, 139 F.Supp. 875, 877-78 (N.D.N.Y. 1956).

^{/28} It is the very nature of the shuttlers' mission that also beclouds any examination of the plaintiff's "right" of control over the shuttlers' means of performance, as mentioned above.

[20.]

during the years in question, independent contractors and not employees within the meaning of FICA, FUTA, and Withholding. While the question is a close one, this court is of the opinion that such factors as the lack of a seniority system, the irregular work patterns of the "shuttlers," the lack of benefits for "shuttlers," and the "shuttlers'" ability to work for competitors, when measured alongside the unclear factors here of the right of control and discharge tip the scales in favor of plaintiff.

This court is not unmindful of Revenue Ruling 66-381,^{/29} which holds that "the shuttlers performing services for the agency . . . are employees of the agency for Federal employment tax purposes."^{/30} The Revenue Ruling, it should be noted, was issued as a direct response to the specific inquiry involved in this case, i.e., were "car shuttlers" employees or independent contractors?

While Revenue Rulings are certainly persuasive,^{/31} such rulings do not commit this court to any particular inter-

^{/29} Plf's Exh. #5.

^{/30} *Id.* at 12.

^{/31} *McMartin Industries v. Vinal*, 301 F.Supp. 749, 754 (D.D.C. 1969), *aff'd*, 441 F.2d 1274 (8th Cir. 1971).

pretation of the law.^{/32} It is significant to note that one important difference between that Ruling and this opinion is the stress to be placed upon the right to discharge in this case. The Ruling, citing Ringling Bros.-Barnum and Bailey Com. Shows v. Higgins, 189 F.2d 865 (2d Cir. 1951), equates a failure to renew a "shuttler's" contract with the right to discharge. Yet the Ringling Bros. case is clearly distinguishable, for the contracts in that case differed greatly from the Vehicle Transfer Contracts. The following description of the contracts in the Ringling case suggests the reason why the court ruled that the performers were employees:

'The contracts were for an entire season, seven months, while the circus traveled throughout the United States. In each contract the performer granted an option to the circus to renew the contract for the next succeeding season upon the same terms. The plaintiff could, in effect, discharge by failing to renew; if it did renew, the performer could not appear at any other circus . . . during the off season without plaintiff's written consent.' (emphasis added).

Id. at 869.

The right of discharge, as an important element of the right of control, was much more evident in that case than

^{/32} Miller v. Commissioner, 327 F.2d 846, 850 (2d Cir.) cert. denied, 379 U.S. 816 (1964).

this one, for there was not only an option to renew in those contracts, but there was also an obligation upon the part of the performers not to perform elsewhere without permission, in the event that the option was renewed.

In view of the conclusion reached here that the "shuttlers" were independent contractors, and not employees, the deficiency assessments made by the Commissioner were beyond this statutory power. Plaintiff is, therefore, entitled to recover and defendant's counterclaim must be dismissed.

Submit judgment in accordance with this opinion.

s/ Anthony J. Travia
U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

AVIS RENT A CAR SYSTEM, INC.,	:	[Filed October 3, 1973]
Plaintiff,	:	70 C 70 (AJT)
-against-	:	
UNITED STATES OF AMERICA,	:	<u>JUDGMENT</u>
Defendant.	:	#

-----X

This action having come on for trial before this Court, Honorable Anthony J. Travia, District Judge, presiding, on the 27th day of July 1973, and the parties having that day stipulated to waive a jury trial, and the evidence of the parties having been adduced, and the issues having been duly tried upon all the evidence and exhibits on file in this action, and the Court having filed its Findings of Fact, Conclusions of Law and Opinion dated September 27, 1973,

It is Ordered and Adjudged that the plaintiff Avis Rent A Car System, Inc. recover of the defendant United States of America the sum of \$31,178.42, with interest thereon at the rate of six (6) percent per annum from March 26, 1968, and its costs of this action, and it is

Further Ordered and Adjudged that the counterclaim of defendant is hereby dismissed.

Dated at Brooklyn, New York this 3rd day of October, 1973.

Clerk of Court

APPROVED: BROOKLYN, NEW YORK
OCTOBER 3, 1973

S/ Anthony J. Travia
U.S.D.J.

1. Robert G. Bernstein
NEW YORK COUNTY CLERK
THE ORIGINAL
AND COMPLETE COPY
DATED: OCT. 4 1973

Robert G. Bernstein
Robert G. Bernstein
TYPED OR PRINTED NAME

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LKS:CIS:dew
File No.
700074

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AVIS RENT A CAR SYSTEM, INC.,
Plaintiff,

-against-

UNITED STATES OF AMERICA,
Defendant.

[Filed November 29, 1973]
NOTICE OF APPEAL

Civil Action
No. 70 C 70

S I R S :

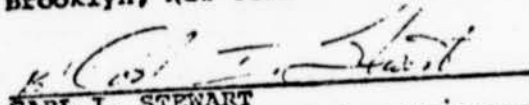
PLEASE TAKE NOTICE that the UNITED STATES OF AMERICA, defendant herein, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order of the District Court (Anthony J. Travia, J.), entered on October 3, 1973 and from each and every part thereof.

Dated: Brooklyn, New York
November 29, 1973

Yours, etc.,

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By:


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CERTIFICATE OF SERVICE

of Vol. V

It is hereby certified that service of this appendix has been made on opposing counsel by mailing four copies thereof on this 12th day of March, 1974, in an envelope, with postage prepaid, properly addressed to him as follows:

Robert Layton, Esquire
Layton and Sherman
375 Park Avenue
New York, New York 10022

Meyer Rothwacks/evh

Meyer Rothwacks,
Attorney.